SENATE—*Friday, November 3, 1989*

(Legislative day of Monday, September 18, 1989)

The Senate met at 9:30 a.m., on the expiration of the recess, and was called to order by the Honorable HERBERT KOHL, a Senator from the State of Wisconsin.

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray:

He hath shewed thee, O man, what is good; and what doth the Lord require of thee, but to do justly, and to love mercy, and to walk humbly with thy God?—Micah 6:8.

God our Father, perfect in truth and justice, once again the Senators bear the onerous responsibility of standing alone to pronounce the word, guilty—not guilty. Cover this place with Your grace and Your wisdom, and grant to each of Your servants a clear mind, an unobstructed conscience, and "the peace of God that passeth understanding." In Jesus' name, who shall judge the world in righteousness. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. BYRD].

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, November 3, 1989.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable HERBERT H. KOHL, a Senator from the State of Wisconsin, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. KOHL thereupon assumed the chair as Acting President pro tempore.

THE JOURNAL

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Journal of the proceedings be approved to date.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

SCHEDULE

Mr. MITCHELL. Mr. President, following the time for the two leaders this morning, there will be a period for morning business until 10 o'clock with Senators permitted to speak therein for up to 5 minutes each.

When morning business concludes at 10 I will request a rollcall vote on a motion to instruct the Sergeant at Arms to request the attendance of Senators.

After that vote, with a quorum having been established, the Senate will resume the impeachment proceedings against Judge Nixon with five rollcall votes occurring in succession.

Two motions filed by Judge Nixon will be the subject of the first two votes, and then there will be one vote each on the three articles of impeachment.

For the information of Senators, in planning their schedules for the day, once the Senate has concluded action on the impeachment proceedings, and the five rollcall votes are completed, I do not anticipate any further rollcall votes today.

I will, hopefully this morning, after discussing the schedule with the distinguished Republican leader, have an announcement with respect to the schedule for Monday, and the succeeding days next week.

RESERVATION OF LEADER TIME

Mr. MITCHELL. Mr. President, I reserve the balance of my leader time. I reserve all of the leader time of the distinguished Republican leader.

I yield the floor.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business not to extend beyond the hour of 10 a.m. with Senators to speak therein for not to exceed 5 minutes each.

The Chair recognizes the Senator from North Carolina [Mr. SANFORD].

ELIMINATE BUDGET GIMMICKS

Mr. SANFORD. President Bush has asked us to reduce the budget by $14 billion in "real deficit reduction—without new taxes, without spending measures that increase the deficit in the future and without scoring gimmicks." I am in favor of that. But all that is purely a symbolic gesture, and will leave us with a real deficit of at least $270 billion in the budget. We can say we have cut the deficit to $110 billion, but we will know that we have left about $160 billion covered up by gimmicks and deceits and shifty accounting practices.

The point on which we must focus, if we are ever to get our debt and deficit under control, is that we must have an honest budget, telling the truth about our true deficit.

Last year many of my colleagues were saying the same things that have been said this year, that this is the worst year yet for budget foolery.

Well, we can end the foolery with amendment No. 1069, already filed, that accurately defines "deficit" as the "annual increase in the public debt" subject to the limit. This very straightforward amendment cuts out all of our tricks while requiring honest deficit numbers based on facts, not fiction.

It is easy to blame Gramm-Rudman-Hollings for all of our gimmickry. But the only fault we should find with Gramm-Rudman-Hollings is the contrived deficit figures it permits, figures that do not come close to the real number—the increase in our debt subject to the limit. Because of that we have built up a massive debt. Because of that we are now required to increase the debt limit to more than $3 trillion.

Gramm-Rudman-Hollings permits the Social Security trust funds to be used to coverup the size of our deficit problems. None of the trust funds would be used to calculate a phony deficit figure under amendment No. 1069. On budget or off, the deficit would be the same under my proposal.

I do not believe that Gramm-Rudman-Hollings planned for us to spend money after the final snapshot and then not account for that spending as we now do. That spending may not be reflected in the Gramm-Rudman deficit, but it is counted in the bottom-line, annual debt increase. My amendment would eliiminate this gimmick.

The use of net interest to mask the true size of our deficits was already in use before Gramm-Rudman-Hollings. The fiscal year 1990 budget resolution includes an interest coverup of about $65 billion, by counting interest paid to Social Security as income to the Government rather than an expenditure, which it clearly is. Amendment No. 1069 would not permit this deceit. The interest figure counted in the debt increase is gross interest, not net.

I invite all of my colleagues who are fed up with these budget games and gimmicks to join me in eliminating

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

them by supporting amendment No. 1069.

Mr. President, I am pleased to announce that Senator ROBB and Senator GRAHAM are cosponsors, and I ask unanimous consent that they be listed as cosponsors of this amendment.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. SANFORD. I yield the floor.

Mr. PRYOR addressed the Chair.

The ACTING PRESIDENT pro tempore. The Chair recognizes the Senator from Arkansas [Mr. PRYOR].

Mr. PRYOR. Mr. President, I thank the Chair.

LEE ATWATER AND THE MEDICARE CATASTROPHIC COVERAGE ACT

Mr. PRYOR. Surely Lee Atwater can be praised for his political ingenuity. Unfortunately, however, the same cannot be said for his commitment to accuracy and fairness.

Mr. Atwater's latest salvo from his command post at the Republican National Committee [RNC] is a fundraising letter that contains a statement in a questionnaire about the Medicare Catastrophic Coverage Act that is, at best, misleading, and, at worst, downright deceitful.

The letter states, and I quote, Mr. President:

> Before President Bush was elected, the Democrats in Congress passed legislation which just recently went into effect and placed a tax on senior citizens to pay for catastrophic health insurance.

Mr. President, I am going to read that statement one more time:

> Before President Bush was elected, the Democrats in Congress passed legislation which just recently went into effect and placed a tax on senior citizens to pay for catastrophic health insurance.

Obviously, Mr. President, such comments are intended to imply that Republicans had nothing to do with the unpopular surtax, which was to be used to pay for the ultimate benefits of the program. Unfortunately for Mr. Atwater, these Republican National Committee fundraising efforts do much more damage to the truth than to the Democratic Party. As anyone who has followed the development of the catastrophic health care legislation knows, this monumental but failed effort was truly a bipartisan effort.

Republican leaders from the White House to both Houses of Congress actively supported the Medicare Catastrophic Coverage Act. When the House passed its legislation in June 1988, House Republican leader, ROBERT MICHEL said, "Today I am happy to support the program that has long been desirable and requested by our President." When President Reagan signed the Medicare Catastrophic Coverage Act, and the surtax included, into law July 1988, President Reagan called it "An historic piece of legislation."

In September 1988, the first Presidential debate with Governor Dukakis, Vice President Bush proclaimed that, "I am proud to have been a part of an administration that passed the first catastrophic health bill." Seven months later, Mr. President, April 21, 1989, President Bush restated his support: "It would be imprudent to tinker with Medicare catastrophic insurance literally in its first few months of life." President Bush's own Secretary of HHS, Dr. Louis Sullivan stated September 20, 1989: "Our position, again, I want to repeat, is that we would rather not tamper with the legislation at all." In fact, well after it was clear that a good number of Democrats and Republicans alike were committed to reducing or eliminating the surtax, President Bush and his administration stood firm and opposed any such move.

In June 1989, President Bush's Secretary of HHS, again, Dr. Sullivan, said "It would be extremely injudicious to reduce the surtax before all of the catastrophic benefits are fully implemented."

Later in the year, when most in Congress felt that changes to the law were inevitable, Senator ROBERT DOLE, the distinguished Republican leader of this body, said, "We need to recognize that this is a Republican initiative that we are about to dismantle." Moreover, while the Democrats did control the Congress, when the catastrophic health legislation passed, 76 percent, or 34 of the 45 Republican Senators cast their vote in support. In the House of Representatives, 61 percent, 98 of the 161 Republican Representatives, voted in favor, Mr. President, of catastrophic health insurance. People now and into the future will argue about whether we made a mistake in passing the Medicare Catastrophic Coverage Act or in repealing the surtax and much of the laws and benefits. If we made a mistake, Mr. President, we made that mistake together.

We must always keep in mind that we will have to work together again if we are going to have any chance of meeting the overwhelming unmet health care needs of America. Instead of pointing our finger at one another for political gain, now let us work together to gain some protection for the 37 million Americans under the age of 65 who have none, and for the millions of chronically ill of all ages who have no long-term care insurance, little or no protection against accrual and relentless cost increases of prescription drugs.

Yes, Lee Atwater is a creative man. I just wish that he would not channel his creativity into distortions relating to the development of the Medicare Catastrophic Coverage Act. The battlefield of catastrophic insurance is covered with casualties. The simple truth, Mr. President, should not be added to its list of injured or missing in action.

Mr. President, I thank the chair and I yield the floor.

Mr. MITCHELL addressed the Chair.

The ACTING PRESIDENT pro tempore. The Chair recognizes the majority leader.

ORDER OF PROCEDURE

Mr. MITCHELL. Mr. President, I ask unanimous consent that following the establishment of a quorum, beginning at 10 o'clock a.m. and the proclamation of the Sergeant at Arms, and a brief statement that I will make, the Senate proceed to vote on the two motions proposed by Judge Nixon and the three articles of impeachment against Judge Nixon in sequence and without any intervening action or debate.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following nominations.

Calendar No. 452, Carroll A. Campbell, Jr., to be a member of the Trustees of the James Madison Memorial Fellowship Foundation;

Calendar No. 453, Mary Sterling, to be an Assistant Secretary of Labor;

Calendar No. 454, Patrick J. Cleary, to be a member of the National Mediation Board;

Calendar No. 455, Joshua M. Javits to be a member of the National Mediation Board;

Calendar No. 456, Thomas E. Anfinson, to be Deputy Under Secretary for Management, Department of Education; and

Calendar No. 457, Betsy Brand, to be Assistant Secretary for Vocational and Adult Education, Department of Education.

Mr. President, I further ask unanimous consent that the nominees be confirmed, en bloc, that any statements appear in the RECORD as if read, that the motions to reconsider be laid upon the table en bloc, that the President be immediately notified of the Senate's action, and that the Senate return to legislative session.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The nominations considered and confirmed en bloc are as follows:

JAMES MADISON MEMORIAL FELLOWSHIP FOUNDATION

Carroll A. Campbell, Jr., of South Carolina, to be a member of the Board of Trustees of the James Madison Memorial Fellowship Foundation for a term of 4 years.

DEPARTMENT OF LABOR

Mary Sterling, of Missouri, to be an Assistant Secretary of Labor.

NATIONAL MEDIATION BOARD

Patrick J. Cleary, of Virginia, to be a member of the National Mediation Board for the term expiring July 1, 1991.

Joshua M. Javits, of the District of Columbia, to be a member of the National Mediation Board for the term expiring July 1, 1992.

DEPARTMENT OF EDUCATION

Thomas E. Anfinson, of California, to be Deputy Under Secretary for Management, Department of Education.

Betsy Brand, of Virginia, to be Assistant Secretary for Vocational and Adult Education, Department of Education.

LEGISLATIVE SESSION

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now return to legislative session.

NATIONAL WOMEN'S VETERANS RECOGNITION WEEK

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of House Joint Resolution 35, a joint resolution to designate November 5-11 as National Women's Veterans Recognition Week.

The ACTING PRESIDENT pro tempore. The joint resolution will be stated by title.

The assistant legislative clerk read as follows:

A joint resolution (H.J. Res. 35) designating November 5-11, 1989, as National Women's Veterans Recognition Week.

The ACTING PRESIDENT pro tempore. Is there objection to the present consideration of the joint resolution?

There being no objection, the Senate proceeded to consider the joint resolution.

The ACTING PRESIDENT pro tempore. The joint resolution is before the Senate and open to amendment. If there be no amendment to be offered, the question is on the third reading and passage of the joint resolution.

The joint resolution (H.J. Res. 35) was ordered to a third reading, was read the third time, and passed.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the joint resolution was passed.

Mr. WILSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

EXTENSION OF TIME LIMITATIONS ON CERTAIN PROJECTS

Mr. MITCHELL. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 750.

The ACTING PRESIDENT pro tempore laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 750) entitled "An Act extending time limitations on certain projects", do pass with the following amendments:

Strike out all after the enacting clause and insert:

SECTION 1. EXTENSION OF DEADLINE.

Notwithstanding the time limitations of section 13 of the Federal Power Act, the Federal Energy Regulatory Commission, upon the request of the licensees for FERC Projects numbered 2833, 4204, 4586, 4587, 4659, and 4660 (and after reasonable notice), is authorized, in accordance with the good faith, due diligence and public interest requirements of such section 13 and the Commission's procedures under such section, to extend the time required for commencement of construction of each of such projects for up to a maximum of three consecutive two-year periods. This section shall take effect with respect to each such project upon the expiration of the extension (issued by the Commission under such section 13) of the period required for commencement of construction of such project.

Amend the title so as to read: "An Act to extend the deadlines under the Federal Power Act applicable to the construction of a hydroelectric project in the State of Washington.".

Mr. BUMPERS. Mr. President, I urge the Senate to concur on the amendments of the House to S. 750, and hope that the bill can be presented to and signed by the President as soon as possible. I introduced S. 750 on April 11, 1989, at the request of Independence County and the city of Batesville. The legislation would authorize the Federal Energy Regulatory Commission to extend the time periods specified for certain actions in the FERC licenses (project Nos. 4204, 4659, and 4660) held by these entities for hydroelectric projects on existing dams on the White River in Arkansas. The need for these time extensions is detailed in my introductory statement. S. 750 passed the Senate on June 8 with an amendment by the Senators from Washington, adding a project in their State. The House of Representatives amended the legislation to add two additional projects in Washington State and to delete some language in the Senate bill that was deemed by all parties to be unnecessary. The House version passed October 30.

Mr. President, as a result of a previous FERC order the deadline for the commencement of construction for project No. 4660 is November 8, 1989. The other Arkansas projects have deadlines in 1990. It is my understanding that under the Federal Power Act—section 13—and FERC procedures, the license will not automatically expire on that date, but can only be terminated by affirmative action by the FERC, that is, by written order upon due notice to the licensee. Obviously, even with this leeway, we are passing legislation "just under the wire" for project No. 4660. Because of the imminent deadline, the House added the following language making the bill effective retroactively if necessary:

This section shall take effect with respect to each such project upon the expiration of the extension (issued by the Commission under such section 13) of the period required for commencement of construction of such project.

It is the intent of this legislation to authorize FERC to extend these licenses without regard to any interval of time that may occur after the expiration of the currently effective extension of time and prior to FERC's action on a request for extension under this legislation. This should obviate any necessity for FERC to commence a termination procedure prior to a request for an extension. This language will assure that congressional intent can be carried out even if S. 750 is not signed by the President before November 8, 1989.

I have no objections to the House amendments and again urge the concurrence of the Senate.

Mr. GORTON. Mr. President, today I speak in support of S. 750, as amended by the House of Representatives. This legislation allows the Federal Energy Regulatory Commission to extend the construction permits on three hydroelectric projects in Washington State and three in Arkansas. During previous Senate consideration of S. 750, I offered an amendment to legislation sponsored by Senator BUMPERS, which extended the deadline for the Cowlitz Falls project in Lewis County, WA. This amendment, sponsored by myself and Senator ADAMS, was included in S. 750, and with the commendable efforts of Congresswoman UNSOELD and Congressman SWIFT was acceptably modified and passed by the House of Representatives.

Specifically S. 750 as we consider it today, would, among other things, authorize the Federal Energy Regulatory Commission [FERC] to extend the deadline, under the Federal Power Act, for the commencement of construction of the Cowlitz Falls Hydroelectric project on the Cowlitz River in Lewis County, WA. The project has an authorized generating capacity of 70 megawatts and is expected to produce an average of 261,000 megawatt-hours of electric energy annually. At that rate the project would save the equivalent of about 428,600 barrels of oil or 120,800 tons of coal per year.

The FERC issued a license for the Cowlitz Falls project to Public Utility District No. 1 of Lewis County [PUD]

in June 1986. Prior to being licensed, the project underwent extensive analysis and was the subject of complete environmental impact statements at both the State and Federal levels. All pertinent fish, wildlife, and environmental resource agencies concurred in the licensing of the project. Indeed, the project is expected to benefit fishery resources, as it may represent the only feasible means of restoring anadromous fish runs in the upper Cowlitz River basin, runs that were destroyed years ago by the construction of dams downstream of Cowlitz Falls. As the result of an agreement reached with State fish and wildlife authorities and made a condition of the FERC license, the PUD has designed the dam to accommodate the future addition of facilities for collection and transportation of downstream migrant juvenile salmon.

Under the time strictures prescribed in section 13 of the Federal Power Act, the PUD must commence physical construction of project works by June 30, 1990, or the FERC must terminate the license. As the law presently stands, the Commission has no discretion to extend the construction deadline beyond June 1990, even for good cause.

Mr. President, it is our understanding that the PUD and its engineering contractor have proceeded diligently to implement the terms of the FERC license and to move forward with project development. To date, the PUD has spent approximately $10 million on the technical, environmental, and other planning necessary to bring the project to fruition. It recently has become clear, however, that the public interest would be best served if greater flexibility were allowed in timing the project's construction.

By the time FERC issued the license in 1986, the earlier forecasts of regional power shortages had changed to predictions of short-term surpluses. The Commission examined the proposed project in light of the Northwest conservation and electric power plan—regional power plan—prepared by the Northwest Power Planning Council [council]. FERC found Cowlitz Falls to be both economically sound and consistent with the regional power plan, which gives priority to renewable resources projects over other generation facilities. Although regional power surpluses were expected to remain until the early to mid-1990's, FERC observed that forecasting load growth is an inherently uncertain endeavor and concluded that there may well be a regional need for the project's output by the time it could be placed into service—then projected to be 1991 at the earliest. In addition, the Cowlitz Falls project would help the PUD meet its own load growth.

Earlier this year, the Northwest Power Planning Council reexamined the project in light of the 1989 supplement to the regional power plan and reconfirmed that the Cowlitz Falls project is a cost-effective resource. The council observed, however, that the project's value to the region would be enhanced if it could be brought on line sometime after the currently projected in-service date of 1993. The council also expressed concern over the potential for substantial rate impacts to Lewis County ratepayers if the project is developed solely by the PUD. The council noted that these rate impacts could be mitigated if the costs, risks, and benefits of the project were shared with other utilities, and urged the PUD to pursue that option.

Consistent with the council's observations, the PUD has been engaged in a good faith effort to address that concern. Besides taking steps to meet the council's concerns, the PUD has also worked to meet the concerns of the State Department of Ecology and other interested parties.

Despite the council's excellent work in load forecasting and power resources planning, fluctuating demand in the Pacific Northwest and changing regulatory requirements make it very difficult for utilities like the Lewis County PUD to plan, time, market and finance new power generation facilities. These difficulties are exacerbated in the case of hydroelectric facilities such as Cowlitz Falls by the time constraints for commencing construction under section 13 of the Federal Power Act. It would be a shame if the PUD and its ratepayers were forced to forfeit years of planning and millions of dollars in development costs due to conditions beyond its control. There is wide consensus that Cowlitz Falls is a clean, valuable and needed resource—the only questions remaining are when it will be most needed and how its costs and benefits should be shared.

Mr. President, as stated before, this legislation would give FERC the authority to extend the deadline for commencing construction of the Cowlitz Falls project, in addition to two other projects in Washington State and the three Arkansas projects, by a maximum of three additional 2-year periods beyond the time currently authorized, in accordance with the good faith, due diligence and public interest standards of the Federal Power Act. In determining whether extensions under this amendment are in the public interest, it is expected that FERC will take into account the regional power supply situation as reported by the Northwest Power Planning Council in its periodic updates of the regional power plan. Nothing in the amendment is intended to detract from any discretionary authority FERC may presently have to extend time periods for completion of project construction or for acquisition of necessary property rights.

In view of the special importance of regional power planning in the Pacific Northwest, it is my expectation that FERC, in considering future requests for extensions under this legislation for Cowlitz Falls project, will take into account not only the licensee's diligence toward developing and marketing the project, but also regional power planning objectives and marketing conditions. By optimizing the timing of the Cowlitz Falls project's construction from a regional perspective, the project's contribution to the Northwest's energy mix can be maximized and its rate impact on consumers minimized.

I would again like to express my appreciation to the Senate Energy and Natural Resources Committee Chairman, Senator JOHNSTON, and the Ranking Minority Member, Senator MCCLURE, for their assistance in this matter and particularly to Senator BUMPERS who has kindly agreed to allow the earlier amendment to his legislation. Additionally, I would express my appreciation to the Senate Energy and Natural Resources Committtee staff and Senator BUMPERS staff for their work.

Mr. MITCHELL. Mr. President, I move that the Senate concur in the House amendments.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the motion of the Senator from Maine.

The motion was agreed to.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. WILSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ACQUISITION OF CERTAIN LANDS ADJACENT TO ROCKY MOUNTAIN NATIONAL PARK

Mr. MITCHELL. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 737.

The ACTING PRESIDENT pro tempore laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 737) entitled "An Act to authorized the Secretary of the Interior to acquire certain lands adjacent to the boundary of Rocky Mountain National Park in the State of Colorado", do pass with the following amendments:

Strike out all after the enacting clause and insert:

SECTION 1. BOUNDARY ADJUSTMENT.

(a) ACQUISITION AND BOUNDARY CHANGE.—The Secretary of the Interior (hereinafter referred to as the "Secretary") is authorized to acquire, by donation, purchase with donated or appropriated funds, or by exchange, lands or interests therein within the area generally depicted as "Proposed

Park Additions" on the map entitled "Proposed Park Additions, Rocky Mountain National Park", numbered 121-80, 106-A and dated May, 1989, which map shall be on file and available for public inspection in the Office of the National Park Service, Department of the Interior. Upon acquisition of such lands, the Secretary shall revise the boundary of Rocky Mountain National Park to include such lands within the park boundary and shall administer such lands as part of the park subject to the laws and regulations applicable thereto.

(b) BOUNDARY ADJUSTMENT FOR ROOSEVELT NATIONAL FOREST.—Upon acquisition of such lands by the Secretary, the Secretary of Agriculture shall revise the boundary of the Roosevelt National Forest to exclude such lands from the national forest boundary.

Amend the title so as to read: "An Act to adjust the boundary of Rocky Mountain National Park.".

Mr. MITCHELL. Mr. President, I move that the Senate disagree to the House amendments.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the motion of the Senator from Maine.

The motion was agreed to.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. WILSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

COMMEMORATION OF THE GOLDEN ANNIVERSARY OF THE MOUNT RUSHMORE NATIONAL MEMORIAL

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar item No. 330, S. 148, the 1989 Mount Rushmore Commemorative Coin Act.

The ACTING PRESIDENT pro tempore. The bill will be stated by title.

The legislative clerk read as follows:

A bill (S. 148) to require the Secretary of the Treasury to mint coins in commemoration of the Mount Rushmore National Memorial.

The ACTING PRESIDENT pro tempore. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. DASCHLE. Mr. President, I am proud to join the senior Senator from South Dakota, Senator PRESSLER, in offering S. 148, The 1991 Mount Rushmore Commemorative Coin Act.

S. 148 as reported by the Senate Banking Committee would mandate the minting of gold, silver and clad coins to commemorate the Golden Anniversary of the completion of the colossal Mount Rushmore sculpture depicting four great American Presidents. The mountain has become a symbol of democracy for all Americans, as well as for those who cherish freedom around the world.

The proceeds from the sale of the commemorative coins would enhance the National Park Service's ability to share America's Mount Rushmore story. The last major improvement to the facilities at Mount Rushmore occurred in 1964. Today's visitors to the monument greatly exceed the facility's capability. Improvements are necessary to expand the visitors' center and improve the handicapped and elderly access to the facility. Most importantly, preventive maintenance on the granite faces is urgently needed to ensure their presence for generations to come. Without improvements, the monument will become a reflection of careless neglect.

It is only appropriate that the Senate act on this bill at this time. One hundred years ago yesterday, South Dakota was admitted to the Union. There could be no more fitting recognition of South Dakota by this U.S Senate than to commemorate one of South Dakota's greatest gifts to the country.

AMENDMENT NO. 1079

(Purpose: To make a series of technical amendments)

Mr. WILSON. Mr. President, I send an amendment to the desk on behalf of Senator PRESSLER and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The amendment will be stated.

The legislative clerk read as follows:

The Senator from California [Mr. WILSON], for Mr. PRESSLER, proposes an amendment numbered 1079.

Mr. WILSON. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

On page 4, line 25, strike "beginning on January 1, 1991" and insert "during the period beginning on January 1, 1991, and ending on December 31, 1991".

On page 5, beginning with "and" on line 3, strike all through "Mint" on line 4.

On page 7, lines 2 and 3, strike ", the Federal Savings and Loan Insurance Corporation".

The ACTING PRESIDENT pro tempore. The question is on agreeing to the amendment.

The amendment (No. 1079) was agreed to.

The ACTING PRESIDENT pro tempore. The bill is open to further amendment. If there be no further amendments to be proposed, the question is on the engrossment and the third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 148

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "1991 Mount Rushmore Commemorative Coin Act".

SEC. 2. COIN SPECIFICATIONS.

(a) FIVE DOLLAR GOLD COINS.—

(1) ISSUANCE.—The Secretary of the Treasury (hereafter in this Act referred to as the "Secretary") shall issue not more than 500,000 five dollar coins which shall weigh 8.359 grams, have a diameter of 0.850 inches, and shall contain 90 percent gold and 10 percent alloy.

(2) DESIGN.—The design of such five dollar coins shall be emblematic of the Mount Rushmore National Memorial. On each such five dollar coin there shall be a designation of the value of the coin, an inscription of the year "1991", and inscriptions of the words "Mount Rushmore: Shrine of Democracy", "Golden Anniversary 1941-1991", "Liberty", "In God We Trust", "United States of America", and "E Pluribus Unum".

(b) ONE DOLLAR SILVER COINS.—

(1) ISSUANCE.—The Secretary shall issue not more than 2.5 million one dollar coins which shall weigh 26.73 grams, have a diameter of 1.500 inches, and shall contain 90 percent silver and 10 percent copper.

(2) DESIGN.—The design of such dollar coins shall be emblematic of the Mount Rushmore National Memorial. On each such coin there shall be a designation of the value of the coin, an inscription of the year "1991", and inscriptions of the words "Mount Rushmore: Shrine of Democracy", "Golden Anniversary 1941-1991", "Liberty", "In God We Trust", "United States of America", and "E Pluribus Unum".

(c) HALF DOLLAR CLAD COINS.—

(1) ISSUANCE.—The Secretary shall issue not more than 2.5 million half dollar coins which shall be minted to the specifications for half dollar coins contained in section 5112(b) of title 31, United States Code.

(2) DESIGN.—The design of such half dollar coins shall be emblematic of the Mount Rushmore National Memorial. On each such coin there shall be a designation of the value of the coin, an inscription of the year "1991", and inscriptions of the words "Mount Rushmore: Shrine of Democracy", "Golden Anniversary 1941-1991", "Liberty", "In God We Trust", "United States of America", and "E Pluribus Unum".

(d) LEGAL TENDER.—The coins issued under this Act shall be legal tender as provided in section 5103 of title 31, United States Code.

SEC. 3. SOURCES OF BULLION.

(a) The Secretary shall obtain silver for the coins minted under this Act from stockpiles established under the Strategic and Critical Minerals Stock Piling Act (50 U.S.C. 98 et seq.).

(b) The Secretary shall obtain gold for the coins minted under this Act pursuant to the authority of the Secretary under existing law.

SEC. 4. SELECTION OF DESIGN.

The design for each coin authorized by this Act shall be selected by the Secretary after consultation with the Mount Rushmore National Memorial Society of Black Hills (hereafter in this Act referred to as the "Society").

SEC. 5. SALE OF COINS.

(a) SALE PRICE.—Notwithstanding any other provision of law, the coins issued under this Act shall be sold by the Secretary at a price equal to the face value, plus the cost of designing and issuing such coins (including labor, materials, dies, use of ma-

chinery, overhead expenses, marketing, and shipping).

(b) BULK SALES.—The Secretary shall make bulk sales at a reasonable discount to reflect the lower costs of such sales.

(c) PREPAID ORDERS AT A DISCOUNT.—The Secretary shall accept prepaid orders for the coins prior to the issuance of such coins. Sales under this subsection shall be at a reasonable discount to reflect the benefit of prepayment.

(d) SURCHARGE REQUIRED.—All sales shall include a surcharge of $35 per coin for the five dollar coins, $7 per coin for the one dollar coins, and $1 for the half dollar coins.

SEC. 6. ISSUANCE OF THE COINS.

(a) TIME FOR ISSUANCE.—The coins authorized under this Act shall be issued during the period beginning on January 1, 1991, and ending on December 31, 1991.

(b) PROOF AND UNCIRCULATED COINS.—The coins authorized under this Act shall be issued in uncirculated and proof qualities.

SEC. 7. GENERAL WAIVER OF PROCUREMENT REGULATIONS.

No provision of law governing procurement or public contracts shall be applicable to the procurement of goods or services necessary for carrying out the provisions of this Act. Nothing in this section shall relieve any person entering into a contract under the authority of this Act from complying with any law relating to equal employment opportunity.

SEC. 8. DISTRIBUTION OF SURCHARGES.

Of the total surcharges received by the Secretary from the sale of the coins issued under this Act—

(1) 50 percent shall be returned to the Federal Treasury for purposes of reducing the national debt; and

(2) 50 percent shall be promptly paid by the Secretary to the Society to assist the Society's efforts to improve, enlarge, and renovate the Mount Rushmore National Memorial.

SEC. 9. AUDITS.

The Comptroller General shall have the right to examine such books, records, documents, and other data of the Society as may be related to the expenditure of amounts paid under section 8.

SEC. 10. COINAGE PROFIT FUND.

Notwithstanding any other provision of law—

(1) all amounts received from the sale of coins issued under this Act shall be deposited in the coinage profit fund;

(2) the Secretary shall pay the amounts authorized under this Act from the coinage profit fund to the Mount Rushmore National Memorial Society of Black Hills; and

(3) the Secretary shall charge the coinage profit fund with all expenditures under this Act.

SEC. 11. FINANCIAL ASSURANCES.

(a) The Secretary shall take such actions as may be necessary to ensure that the minting and issuance of the coins referred to in section 2 shall not result in any net cost to the Federal Government.

(b) No coin shall be issued under this Act unless the Secretary has received—

(1) full payment therefor;

(2) security satisfactory to the Secretary to indemnify the United States for full payment; or

(3) a guarantee of full payment satisfactory to the Secretary from a depository institution whose deposits are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.

Mr. MITCHELL. Mr. President, I move to reconsider the vote.

Mr. WILSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

NATIONAL NUTRITION MONITORING AND RELATED RESEARCH ACT

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar item No. 251, S. 253, a bill to establish the national nutrition monitoring program.

The ACTING PRESIDENT pro tempore. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 253) to establish a coordinated National Nutrition Monitoring and Related Research Program, and a comprehensive plan for the assessment of the nutritional and dietary status of the United States population and the nutritional quality of food consumed in the United States, with the provision for the conduct of scientific research and development in support of such program and plan.

The ACTING PRESIDENT pro tempore. Is there objection to the request of the Senator from Maine?

There being no objection, the Senate proceeded to consider the bill.

Mr. BINGAMAN. Mr. President, I am pleased once again to present to the Senate S. 253, the National Nutrition Monitoring and Related Research Act of 1989. This measure, which is cosponsored by 29 of my distinguished colleagues, will greatly enhance the Federal Government's ability to collect and disseminate important information about the nutritional quality of our food supply. I believe this legislation is crucial to the health and well-being of all Americans, and I urge its swift passage.

A. THE NEED FOR LEGISLATION

I am pleased to say that during the past few years, some important improvements have been made in Federal efforts to coordinate nutrition-related research. I believe that much of the improvement is a direct result of this legislation and congressional concern. Yet despite this improvement, current Federal efforts remain largely inadequate and disjointed. We still do not have a comprehensive nutrition monitoring program in this country. We still do not know the current nutritional status of our citizens. And without knowledge of this fundamental component, how can we develop programs to encourage safer, more nutritious food consumption nationwide? How can we develop programs to deal with diseases associated with dietary habits?

I believe that we can lay the groundwork for a truly coordinated national data-gathering program only through a congressional mandate, such as S. 253. Fortunately, an overwhelming number of our colleagues agree. During the 100th Congress, both the House and the Senate overwhelmingly passed legislation nearly identical to this bill. Unfortunately, that measure was vetoed by President Reagan last November.

The President's veto, which is in direct contradiction to former Surgeon General C. Everett Koop's recent recommendation that a national nutrition surveillance system be created, does a serious disservice to the American people. I believe firmly that a national system capable of providing up-to-date information is essential to the formulation of sound public policies and the development of effective nutrition education, nutrition research, and nutrition intervention programs.

With his veto, Mr. Reagan sent a message that he disagrees. Instead, he said that the creation of a coordinated Federal nutrition monitoring system would hinder Federal nutrition related functions. Such a statement is difficult to support, however, in light of extensive House and Senate testimony which revealed, as I stated earlier, that many current Federal efforts lack adequate accountability, use imprecise or nonstandardized assessment methodologies, fail to give adequate attention to high-risk groups and geographic areas, and fail to use available resources effectively. Because of these deficiencies, we know little about the current nutritional and dietary needs of the people of this country.

B. S. 253 PROVISIONS

S. 253 recognizes that we must streamline the administrative functions of Federal nutrition monitoring programs if we are to better understand the relationship between diet, nutrition, and health.

Title I of the act establishes a 10-year coordinated nutrition monitoring and research program that is to be the joint responsibility of the Secretaries of the Departments of Agriculture and Health and Human Services. An interagency board will help the Secretaries to develop a comprehensive plan for nutrition monitoring and to implement the program. The bill also stipulates that an administrator may be appointed to serve as a coordinator for the plan and program activities.

The 10-year comprehensive plan will serve both as a focal point for nutrition monitoring activities and as a means to identify national nutrition monitoring priorities. The coordinated program will build upon the 1981 joint implementation plan for a comprehensive national nutrition monitoring system, and will include, among other components:

A grant program to encourage and assist State and local monitoring initiatives;

An annual interagency budget for each fiscal year of the program;

A means to stimulate academic-industry-government partnerships to accomplish national nutrition monitoring needs and foster productive interaction; and

A biennial report, through contract with a nationally-known scientific body, on the dietary, nutritional, and health related status of the American people and the nutritional quality of our food supply.

Title II establishes an Advisory Council, to be appointed by the President and the Congress, that will provide scientific and technical advice on the development and implementation of the national nutrition monitoring program established under title I. The Council will also evaluate the effectiveness of the program.

An amendment to this measure offered by the distinguished Senator from Kansas [Mr. DOLE] clarifies that the Council's membership will at all times be representative of various geographic areas, State and local governments, the private sector, academia, scientific and professional societies, agriculture, minority organizations, and public interest groups. I am pleased to accept the Senator's amendment; and I must say that I will never cease to marvel at the number of my colleagues who are interested in this legislation. Such enthusiasm for cost-effective, coordinated nutrition-related research should bode well for the American public.

Title III of the legislation stipulates that by January 1, 1991, the Secretaries are to publish a report, based on current scientific and medical knowledge, containing nutritional and dietary information and guidelines for the general public. Entitled "Dietary Guidelines for Americans," the report is to be updated at least every 5 years.

Title III also requires a public comment period before a Federal agency may issue certain dietary guidance if either Secretary finds the guidance inconsistent with the "Dietary Guidelines for Americans." Briefly, after a 60-day period during which the Secretaries are to review internally the proposed regulations, if either Secretary—or both Secretaries—objects to the proposal, the proposing agency must publish a "notice of comment" in the Federal Register. After the expiration of a 30-day comment period, either Secretary may approve the guidance for dissemination to the public. The guidance must be accompanied by an explanation of its basis and purpose which addresses any substantive comments received.

In summary, Mr. President, the restructuring mandated in S. 253 will ensure the effective use of Federal and State funds. It will help develop State and local initiatives to improve monitoring methods and standards. It will stimulate academic, industrial, and governmental partnerships. And, most importantly, it will help ensure that the American public receives the most up-to-date and comprehensive dietary guidance possible so that healthful dietary decisions may be made.

C. CONCLUSION

I am pleased to note that this legislation, which is the result of long and intensive negotiations spanning a number of years, has won the support of a strong bipartisan coalition in the Congress and a coalition of more than 70 organizations representing health, diet, agriculture, and commodity interests. These organizations include the American Heart Association, the American Dietetic Association, the National Grange, the National Cattlemen's Association, and the United Egg Producers. I request that a more complete list of supporters, and a letter expressing their views on the legislation, be included in the RECORD following my statement.

Mr. President, I would like to conclude by thanking my colleagues on the Governmental Affairs and Agriculture Committees for their assistance in the development and evolution of this legislation. Senator GLENN has provided tremendous leadership as the Governmental Affairs Committee has sought ways in which the Congress can help improve health care, reduce health-care costs, and generally promote good health. His enthusiastic support for health promotion and disease prevention is a testimony to his concern for the well-being of all Americans.

I would like to thank the distinguished chairman of the Agriculture Committee, Senator LEAHY, and the distinguished ranking member, Senator BOSCHWITZ, for their role in this legislation. We are indebted to them and all of the committee members for their efforts to ensure passage of this legislation. It has indeed been a pleasure to work with the chairman, Senator BOSCHWITZ, and other members of the Agriculture Committee.

Finally, I wish to acknowledge the tremendous staff contributions to this bill. Dr. Eileen Chofness and Gioia Bonmartini of the Governmental Affairs Committee, Ed Barron, David Johnson, and Laura Madden of the Agriculture Committee, and Donna Porter of the Congressional Research Service, all have provided valuable assistance to me and my staff.

I would also like to thank and acknowledge the tremendous contribution of the American Heart Association, and in particular, Mary Crane. Her tireless work and enthusiasm truly are admirable.

Without the diligence and hard work of these people, and many others who I have not listed, we would not be in a position to take this important step toward implementing a comprehensive national nutrition monitoring system. Many long hours of effort over the past decade have gone into developing a plan for such a system that all interested parties can support.

The entire Nutrition Monitoring Coalition, in the Senate and the private sector, has come together in the spirit of cooperation to support this legislation. I hope we will be joined by the rest of our colleagues today in passing this bill and sending it to the House.

Mr. President, I ask unanimous consent to have printed in the RECORD a letter I received from various organizations in support of this legislation.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

SEPTEMBER 13, 1989.

Hon. JEFF BINGAMAN,
U.S. Senate, Washington, DC.

DEAR SENATOR BINGAMAN: Our organizations and their members strongly urge you to support the passage of nutrition monitoring legislation reported by the Senate Committee on Governmental Affairs.

In the 100th Congress, such legislation passed the Senate twice via unanimous consent requests and passed the House in a 311 to 84 vote. These overwhelmingly favorable votes clearly point to the broad bi-partisan support that this proposed legislation enjoys.

This legislative mandate would require Federal agencies to develop and coordinate a comprehensive national nutrition monitoring system. It would provide for responsible government by requiring the Department of Health and Human Services, the Department of Agriculture, and others to "speak with one voice" on diet, nutrition and health.

Again, we stronly urge you to suport the passage of this important legislation.

Sincerely,

American Academy of Pediatrics, American Association of Retired Persons, American Baptist Churches, USA, American College of Preventive Medicine, The American Dietetic Association, American Farm Bureau Federation, American Federation of State, County, and Municipal Employees, American Heart Association, American Home Economics Association, The American Meat Institute, American Medical Student Association, American Public Health Association, Association of Schools of Public Health, Association of State and Territorial Health Officials, Association of Teachers of Preventive Medicine, Bread for the World.

Food and Research Action Center, Mennonite Central Committee, National Broiler Council, National Cattlemen's Association, National Consumer League, National Farmers Union, National Milk Producers Federation, National Osteoporosis Foundation, National Pork Producers Council, National Rural Health Association, National Rural Housing Coalition, National Student Campaign Against Hunger, Public Voice for Food and Health Policy, Second Harvest, Service Employees International Union, Society for Nutrition Education, United States Conference of Local Health Officers, World Hunger Education Service.

Mr. GORE. Mr. President, the bill we are considering today involves an issue with wide bipartisan support—food.

The more we find out about our diet, the more we recognize its monumental effect on our health and happiness. Nutrition research has produced major breakthroughs in many health fields.

So it is disturbing to find out how little coordinated date is available on American nutrition. If we are what we eat, our Nation should do a better job of keeping track.

The National Nutrition Monitoring and Related Research Act sets out to encourage more thorough nutritional monitoring in this country—and to coordinate the information already collected by various Federal agencies.

Much of the nutritional data we in Congress use to determine food and health policies is 6 to 10 years out of date. It astounds me that we have flash estimates of the economic health of our country, from the cost-of-living index to the GNP, yet our only reliable gauge of this Nation's nutritional health dates from the early seventies.

The Federal Government has a responsibility to gather information and share it with the American people. This bill is a simple, inexpensive, and effective way to monitor America's health.

I am delighted to see the Senate pass it. It has been debated a very long time, I happen to think too long, but now we can finally move forward with this critically important task.

Mr. BOSCHWITZ. Mr. President, as an original cosponsor of this bill, I am very pleased that we are able to complete Senate action on the National Nutrition Monitoring and Related Research Act (S. 253) today.

Certainly there have been improvements in the coordination of nutrition monitoring in the past few years. However, I remain concerned that our current system does not adequately address the nutrition and health needs of Americans.

This bill strengthens the cooperation that has been developing between the Federal agencies. A comprehensive and coordinated nutrition monitoring system will be established to continually assess the dietary and nutritional status of our Nation's population. The bill also better coordinates the efforts of Federal agencies regarding dietary guidance.

As the ranking Republican on the Senate Nutrition Subcommittee and a strong supporter of Federal nutrition programs, I realize that accurate, timely data is vital to help us determine how effective Federal hunger programs are.

This legislation has received broad bipartisan support in Congress. In addition, a wide range of organizations enthusiastically support this bill.

I urge my colleagues to support this vital legislation to monitor the nutritional health of Americans.

Mr. HEINZ. Mr. President, I rise today in support of S. 253, the National Nutrition Monitoring and Related Research Act of 1989.

As an original cosponsor, I am very pleased we are able to consider this vital legislation. We all know what an important role nutrition plays in our health and well-being. My personal interest in nutrition can be traced back through several generations to my grandfather who lobbied Congress very hard for the enactment of our Nation's first pure food and drug law.

The goal of this legislation is to assist in collecting nutritional data to better respond to the needs of the American public and improve the Nation's knowledge of diet and nutrition. In an era with greater dependence on data gathering and dissemination, it is rather shocking that our Federal agencies have little, if any, cooperative efforts in the collection of nutrition data. Our policy is also disjointed since any Federal agency may issue dietary guidelines without approval by either the Secretary of Health and Human Services [HHS] or Agriculture [USDA], and to date there is no regular publication of Federal dietary guidelines.

As a result, we do not have a true, comprehensive nutritional status of the Nation. We do know, however, that too many Americans go without a proper diet to meet their daily nutritional needs.

Annually, hundreds of independent reports and studies are issued discussing our dietary needs, trends and nutritional status. S. 253 fills the absence of a coordinated, accountable nutrition monitoring effort by establishing an interagency board for nutrition monitoring. HHS and USDA are charged with the task of coordinating their nutrition data-collection efforts, developing and implementing a national nutrition monitoring research plan, establishing a Nutrition Monitoring Advisory Council and preparing annual reports on the quality and effectiveness of nutrition monitoring efforts.

The need for accurate, coordinated, and consistent information on diet and nutrition has never been greater. Although consumers today are paying much closer attention to their diets and eating healthier, they are also easily confused by the health benefits claimed by the millions of products lining the shelves of grocery stores. The fiber-cancer connection, the right amount of fat in a diet, and healthy cholesterol levels must be balanced with other aspects of good nutrition including the recommended daily allowances of vitamins and minerals.

The establishment of a nutrition surveillance system as achieved in this legislation was strongly endorsed in the "1988 Surgeon General's Report on Nutrition and Health" and again this year in the National Research Council's report entitled "Diet and Health: Implications for Reducing Chronic Disease Risk." Both reports recognize the need for enhancing our Nation's nutrition standards.

By establishing a coordinated national nutrition monitoring system, Americans will be assured of receiving the most comprehensive and up-to-date information on nutrition and health on a regular basis. Congress and our Federal agencies, too, will be better informed to make fiscally and physically fit policy decisions relating to our Nation's feeding programs including School Lunch, WIC, nutrition activities for older Americans, and distribution of our surplus USDA commodities.

Mr. President, I urge our colleagues to support this important legislation.

AMENDMENT NO. 1080

(Purpose: To provide for a description for membership on the Council which may be used by the President and certain designated Members of Congress in making appointments)

Mr. WILSON. Mr. President, I send an amendment to the desk on behalf of Senator DOLE and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Califonia [Mr. WILSON], for Mr. DOLE, proposes an amendment numbered 1080.

Mr. WILSON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

On page 20, strike out lines 6 through 20.

On page 20, line 21, strike out "(d)" and insert in lieu thereof "(c)".

On page 20, line 25, insert before the period "and shall include a State or local government employee with a specialized interest in nutrition monitoring".

On page 21, line 1, strike out "(e)" and insert in lieu thereof "(d)".

On page 21, line 6, strike out "(f)" and insert in lieu thereof "(e)".

On page 21, line 16, strike out "(g)" and insert in lieu thereof "(f)"

On page 21, line 19, strike out "(h)" and insert in lieu thereof "(g)"

On page 21, line 23, strike out "(i)" and insert in lieu thereof "(h)"

On page 22, line 3, strike out "(j)" and insert in lieu thereof "(i)"

On page 22, line 6, strike out "(k)" and insert in lieu thereof "(j)"

Mr. DOLE. Mr. President, as someone who has long been involved in nutrition issues, I want to thank the junior Senator from New Mexico and the cosponsors of this bill for their efforts to improve our knowledge of the

nutritional status of Americans. Although I do not necessarily agree with every provision of this measure, I certainly agree with its objectives.

I would like to give a brief explanation of the amendment I am offering to S. 253. As introduced, title II of S. 253 provides for the creation of a nine-member Advisory Council of outside experts to provide scientific and technical advice on the development and implementation of the National Nutrition Monitoring Program established by the bill. Five of the Council members are to be appointed by the President, four by the Congress. Each Advisory Council member appointed by Congress is to be eminent in one of a range of fields that are relevant to nutrition monitoring. Four of the five appointees named by the President are to be chosen from specified Government-related entities.

My amendment would give the President the same flexibility in choosing his appointees to the Advisory Council that Congress would have; in other words, the President's appointees would each be required to be eminent in one of the fields listed in the bill. Second, the amendment requires that the Council at all times include a State or local government employee with a special interest in nutrition monitoring. Under S. 253 as introduced, the President would have been required to appoint a local and a State government employee with a special interest in nutrition monitoring.

The modification I am proposing in no way goes against the intent of the legislation; it simply allows for appropriate flexibility in the selection of members of the Advisory Council. I hope my colleagues will accept this amendment, and I thank the chairman and the junior Senator from New Mexico for their assistance.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the amendment.

The amendment (No. 1080) was agreed to.

The ACTING PRESIDENT pro tempore. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and the third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 253

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "National Nutrition Monitoring and Related Research Act of 1989".

PURPOSES

SEC. 2. The purposes of this Act are to—

(1) make more effective use of Federal and State expenditures for nutrition monitoring, and enhance the performance and benefits of current Federal nutrition monitoring and related research activities;

(2) establish and facilitate the timely implementation of a coordinated National Nutrition Monitoring and Related Research Program, and thereby provide a scientific basis for the maintenance and improvement of the nutritional status of the people of the United States and the nutritional quality (including, but not limited to, nutrient and nonnutritive content) of food consumed in the United States;

(3) establish and implement a comprehensive plan for the National Nutrition Monitoring and Related Research Program to assess, on a continuing basis, the dietary and nutritional status of the people of the United States and the trends with respect to such status, the state of the art with respect to nutrition monitoring and related research, future monitoring and related research priorities, and the relevant policy implications;

(4) establish and improve the quality of national nutritional and health status data and related data bases and networks, and stimulate research necessary to develop uniform indicators, standards, methodologies, technologies, and procedures for nutrition monitoring;

(5) establish a central Federal focus for the coordination, management, and direction of Federal nutrition monitoring activities;

(6) establish mechanisms for addressing the nutrition monitoring needs of Federal, State, and local governments, the private sector, scientific and engineering communities, health care professionals, and the public in support of the foregoing purposes; and

(7) provide for the conduct of such scientific research and development as may be necessary or appropriate in support of such purposes.

DEFINITIONS

SEC. 3. As used in this Act—

(1) the term "nutrition monitoring and related research" means the set of activities necessary to provide timely information about the role and status of factors that bear on the contribution that nutrition makes to the health of the people of the United States, including—

(A) dietary, nutritional, and health status measurements;

(B) food consumption measurements;

(C) food composition measurements and nutrient data banks;

(D) dietary knowledge and attitude measurements; and

(E) food supply and demand determinations;

(2) the term "coordinated program" means the National Nutrition Monitoring and Related Research Program established by section 101(a);

(3) the terms "Interagency Board for Nutrition Monitoring and Related Research" and "Board" mean the Federal coordinating body established by section 101(c);

(4) the term "comprehensive plan" means the comprehensive plan prepared under section 103;

(5) the term "Joint Implementation Plan for a Comprehensive National Nutrition Monitoring System" means the plan of that title submitted to Congress in September 1981 by the Department of Agriculture and the Department of Health and Human Services, under section 1428 of the Food and Agriculture Act of 1977 (7 U.S.C. 3178);

(6) the terms "National Nutrition Monitoring Advisory Council" and "Council" mean the advisory body established under section 201;

(7) the term "Secretaries" means the Secretary of Agriculture and the Secretary of Health and Human Services, acting jointly;

(8) the term "local government" means a local general unit of government or local educational unit; and

(9) the term "nutritional quality" means—

(A) the appropriate levels of individual nutrients in the diet;

(B) the appropriate levels between nutrients in the diet;

(C) the bioavailability of nutrients such as absorption, digestion, and utilization; and

(D) the nutritional importance of non-nutrient substances such as fiber, phytate, and such substances that are naturally found in the food supply.

TITLE I—NUTRITION MONITORING AND RELATED RESEARCH

ESTABLISHMENT OF THE COORDINATED PROGRAM

SEC. 101. (a) There is established a ten-year coordinated program, to be known as the National Nutrition Monitoring and Related Research Program, to carry out the purposes of this Act.

(b) The Secretaries shall be responsible for the implementation of the coordinated program.

(c) To assist in implementing the coordinated program, there is established an Interagency Board for Nutrition Monitoring and Related Research, of which an Assistant Secretary in the Department of Agriculture (designated by the Secretary of Agriculture) and an Assistant Secretary in the Department of Health and Human Services (designated by the Secretary of Health and Human Services) shall be joint chairpersons. The remaining membership of the Board shall consist of additional representatives of Federal agencies, as determined appropriate by the joint chairpersons of the Board. The Board shall meet no less often than once every three months for the two-year period following the date of the enactment of this Act, and when appropriate thereafter.

(d) To establish a central focus and coordinator for the coordinated program, the Secretaries may appoint an Administrator of Nutrition Monitoring and Related Research. The Administrator shall—

(1) be an individual who is eminent in the field of nutrition monitoring and related areas, and be selected on the basis of the established record of expertise and distinguished service of such individual; and

(2) administer the coordinated program with the advice and counsel of the joint chairpersons of the Board, serve as the focal point for the coordinated program, and serve as the Executive Secretary for the National Nutrition Monitoring Advisory Council.

FUNCTIONS OF THE SECRETARIES

SEC. 102. (a) The Secretaries, with the advice of the Board, shall—

(1) establish the goals of the coordinated program and identify the activities required to meet such goals, and identify the responsible agencies with respect to the coordinated program;

(2) update the Joint Implementation Plan for a Comprehensive National Nutrition Monitoring System, and integrate it into the coordinated program;

(3) ensure the timely implementation of the coordinated program and the comprehensive plan prepared under section 103;

(4) include in the coordinated program and the comprehensive plan a competitive grants program, in accordance with the provisions of this Act, to encourage and assist the conduct, by Federal and non-Federal entities on an appropriate matching funds basis, of research (including research described in section 103(a)(3)) that will accelerate the development of uniform and cost-effective standards and indicators for the assessment and monitoring of nutritional and dietary status and for relating food consumption patterns to nutritional and health status;

(5) include in the coordinated program and the comprehensive plan a grants program, in accordance with the provisions of this Act, to encourage and assist State and local governments in developing the capacity to conduct monitoring and surveillance of nutritional status, food consumption, and nutrition knowledge and in using such capacity to enhance nutrition services (including activities described in sections 103(a)(5) and 103(b)(9));

(6) include in the coordinated program each fiscal year an annual interagency budget for each fiscal year of the program;

(7) foster productive interaction, with respect to nutrition monitoring and related research, among Federal efforts, State and local governments, the private sector, scientific communities, health professionals, and the public;

(8) contract with a scientific body, such as the National Academy of Sciences or the Federation of American Societies for Experimental Biology, to interpret available data analyses, and publish every two years, or more frequently if appropriate, a report, on the dietary, nutritional, and health-related status of the people of the United States and the nutritional quality (including, but not limited to, nutrient and nonnutritive content) of food consumed in the United States; and

(9)(A) foster cost recovery management techniques in the coordinated program; and

(B) impose appropriate charges and fees for publications of the coordinated program, including print and electronic forms of data and analysis, and use the proceeds of such charges and fees for purposes of the coordinated program (except that no such charge or fee imposed on an educational or other nonprofit organization shall exceed the actual costs incurred by the coordinated program in providing the publications involved).

(b) The Secretaries shall submit to the President for transmittal to Congress by January 15 of each alternate year, beginning with January 15 following the date of the enactment of this Act, a biennial report that shall—

(1) evaluate the progress of the coordinated program;

(2) summarize the results of such coordinated program components as are developed under section 103;

(3) describe and evaluate any policy implications of the analytical findings in the scientific reports required under subsection (a)(8), and future priorities for nutrition monitoring and related research;

(4) include in full the annual reports of the Council provided for in section 202; and

(5) include an executive summary of the report most recently published by the scientific body, as provided for in subsection (a)(8).

DEVELOPMENT OF THE COMPREHENSIVE PLAN FOR THE NATIONAL NUTRITION MONITORING AND RELATED RESEARCH PROGRAM

SEC. 103. (a) The Secretaries, with the advice of the Board, shall prepare and implement a comprehensive plan for the coordinated program which shall be designed to—

(1) assess, collate data with respect to, analyze, and report, on a continuous basis, the dietary and nutritional status of the people of the United States, and the trends with respect to such status (dealing with such status and trends separately in the case of preschool and school-age children, pregnant and lactating women, elderly individuals, low income populations, blacks, Hispanics, and other groups, at the discretion of the Secretaries), the state of the art with respect to nutrition monitoring and related research, future monitoring and related research priorities, and relevant policy implications of findings with respect to such status, trends, and research;

(2) sample representative subsets of identifiable low income populations (such as Native Americans, Hispanics, or the homeless), and assess, analyze, and report, on a continuous basis, for a representative sample of the low income population, food and household expenditures, participation in food assistance programs, and periods experienced when nutrition benefits are not sufficient to provide an adequate diet;

(3) sponsor or conduct research necessary to develop uniform indicators, standards, methodologies, technologies, and procedures for conducting and reporting nutrition monitoring and surveillance;

(4) develop and keep updated a national dietary and nutritional status data bank, a nutrient data bank, and other data resources as required;

(5) assist State and local government agencies in developing procedures and networks for nutrition monitoring and surveillance; and

(6) focus the activities of the Federal agencies.

(b) The comprehensive plan, at a minimum, shall include components to—

(1) maintain and coordinate the National Health and Nutrition Examination Survey (NHANES) and the Nationwide Food Consumption Survey (NFCS);

(2) provide, by 1991, for the continuous collection, processing, and analysis of nutritional and dietary status data through stratified probability samples of the people of the United States designed to permit statistically reliable estimates of high-risk groups and geopolitical or geographic areas, and to permit accelerated data analysis (including annual analysis, as appropriate);

(3) maintain and enhance other Federal nutrition monitoring efforts such as the Centers for Disease Control Nutrition Surveillance Program and the Food and Drug Administration Total Diet Study, and, to the extent possible, coordinate such efforts with the surveys described in paragraphs (1) and (2);

(4) incorporate, in survey design, military and (where appropriate) institutionalized populations;

(5) complete the analysis and interpretation of the data sets from the surveys described in paragraph (1) collected prior to 1984 within the first year of the comprehensive plan;

(6) improve the methodologies and technologies, including those suitable for use by States and localities, available for the assessment of nutritional and dietary status and trends;

(7) develop uniform standards and indicators for the assessment and monitoring of nutritional and dietary status, for relating food consumption patterns to nutritional and health status, and for use in the evaluation of Federal food and nutrition intervention programs;

(8) establish national baseline data and procedures for nutrition monitoring;

(9) provide scientific and technical assistance, training, and consultation to State and local governments for the purpose of—

(A) obtaining dietary and nutrition status data;

(B) developing related data bases; and

(C) promoting the development of regional, State, and local data collection services to become an integral component of a national nutritional status network;

(10) establish mechanisms to identify the needs of users of nutrition monitoring data and to encourage the private sector and the academic community to participate in the development and implementation of the comprehensive plan and contribute relevant data from non-Federal sources to promote the development of a national nutritional status network;

(11) compile an inventory of Federal, State, and nongovernment activities related to nutrition monitoring and related research;

(12) focus on national nutrition monitoring needs while building on the responsibilities and expertise of the individual membership of the Board;

(13) administer the coordinated program, define program objectives, priorities, oversight, responsibilities, and resources, and define the organization and management of the Board and the Council; and

(14) provide a mechanism for periodically evaluating and refining the coordinated program and the comprehensive plan that facilitates cooperation and interaction by State and local governments, the private sector, scientific communities, and health care professionals, and that facilitates coordination with non-Federal activities.

(c) The comprehensive plan shall—

(1) allocate all of the projected functions and activities under the coordinated program among the various Federal agencies and offices that will be involved;

(2) contain an affirmative statement and description of the functions to be performed and activities to be undertaken by each of such agencies and offices in carrying out the coordinated program; and

(3) constitute the basis on which each agency participating in the coordinated program requests authorizations and appropriations for nutrition monitoring and related research during the ten-year period of the program.

(d)(1) Within twelve months after the date of enactment of this Act, the Secretaries shall publish in the Federal Register a proposed comprehensive plan for public review for a comment period of no less than sixty days.

(2) Within sixty days after the comment period under paragraph (1) expires, and after considering any comments received, the Secretaries shall submit to the President, for submission to the Congress and for publication in the Federal Register, the final comprehensive plan.

(e) Nothing in this section may be construed as modifying, or as authorizing the Secretaries or the comprehensive plan to modify, any provision of an appropriation

Act (or any other provision of law relating to the use of appropriated funds) that specifies—

(1) the department or agency to which funds are appropriated; or

(2) the obligations of such department or agency with respect to the use of such funds.

IMPLEMENTATION OF THE COMPREHENSIVE PLAN

SEC. 104. (a) The comprehensive plan shall be carried out during the period ending with the close of the ninth fiscal year following the fiscal year in which the comprehensive plan is submitted in its final form under section 103(d)(2), and shall be—

(1) carried out in accord with, and meet the program objectives specified in, section 103(a) and paragraphs (1) through (11) of section 103(b);

(2) managed in accord with paragraphs (12) through (14) of section 103(b);

(3) carried out, by the Federal agencies involved, in accord with the allocation of functions and activities under section 103(c); and

(4) funded by appropriations made to such agencies for each fiscal year of the program.

(b) Nothing in this title may be construed to grant any new regulatory authority or to limit, expand, or otherwise modify any regulatory authority under existing law, or to establish new criteria, standards, or requirements for regulation under existing law.

SCIENTIFIC RESEARCH AND DEVELOPMENT IN SUPPORT OF THE COORDINATED PROGRAM AND COMPREHENSIVE PLAN

SEC. 105. The Secretaries shall coordinate the conduct of, and may contract with the National Science Foundation, the National Aeronautics and Space Administration, the National Oceanic and Atmospheric Administration, the National Institute of Standards and Technology, and other suitable Federal agencies, for such scientific research and development as may be necessary or appropriate in support of the coordinated program and the comprehensive plan and in furtherance of the purposes and objectives of this Act.

ANNUAL BUDGET SUBMISSION

SEC. 106. (a) The President, at the same time as the submission of the annual budget to the Congress, shall submit a report to the Committees on Agriculture and Science, Space, and Technology of the House of Representatives and to the Committees on Agriculture, Nutrition, and Forestry and Governmental Affairs of the Senate on expenditures required for carrying out the coordinated program and implementing the comprehensive plan. The report shall detail, for each of the agencies that are allocated responsibilities under the coordinated program—

(1) the amounts spent on the coordinated program during the fiscal year most recently ended;

(2) the amounts expected to be spent during the current fiscal year; and

(3) the amounts requested in the annual budget for the fiscal year for which the budget is being submitted.

(b) Nothing in this title is intended to either—

(1) authorize the appropriation or require the expenditure of any funds in excess of the amount of funds that would be authorized or expended for the same purposes in the absence of the coordinated program; or

(2) limit the authority of any of the participating agencies to request and receive funds for such purposes (for use in the coordinated program) under other laws.

TITLE II—NATIONAL NUTRITION MONITORING ADVISORY COUNCIL

ESTABLISHMENT OF THE COUNCIL

SEC. 201. (a)(1) The President shall establish, within ninety days after the date of the enactment of this Act, a National Nutrition Monitoring Advisory Council. The Council shall assist in carrying out the purposes of this Act, provide scientific and technical advice on the development and implementation of the coordinated program and comprehensive plan, and serve in an advisory capacity to the Secretaries.

(2) The Council shall consist of nine voting members, of whom—

(A) five members shall be appointed by the President; and

(B) four members shall be appointed by Congress, of whom—

(i) one shall be appointed by the Speaker of the House of Representatives;

(ii) one shall be appointed by the minority leader of the House of Representatives;

(iii) one shall be appointed by the President pro tempore of the Senate; and

(iv) one shall be appointed by the minority leader of the Senate.

(3) The Council also shall include the joint chairpersons of the Board as ex officio nonvoting members.

(b) Each person appointed to the Council shall be—

(1) eminent in the field of administrative dietetics, clinical dietetics, community nutrition research, public health nutrition, nutrition monitoring and surveillance, nutritional biochemistry, food composition and nutrient analysis, health statistics, management, epidemiology, food technology, clinical medicine, public administration, health education, nutritional anthropology, food consumption patterns, food assistance programs, agriculture, or economics; and

(2) selected solely on the basis of an established record of distinguished service.

(c) The Council membership, at all times, shall have representatives from various geographic areas, the private sector, academia, scientific and professional societies, agriculture, minority organizations, and public interest organizations and shall include a State or local government employee with a specialized interest in nutrition monitoring.

(d) The Chairperson of the Council shall be elected from and by the Council membership. The term of office of the Chairperson shall not exceed five years. If a vacancy occurs in the Chairpersonship, the Council shall elect a member to fill such vacancy.

(e) The term of office of each of the voting members of the Council shall be five years, except that of the five members first appointed by the President, two shall be appointed for a term of two years, two for terms of three years, and one for a term of four years, as designated by the President at the time of appointment. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the predecessor of such member was appointed shall be appointed for the remainder of such term. No member shall be eligible to serve continuously for more than two consecutive terms.

(f) The initial members of the Council shall be appointed or designated not later than ninety days after the date of the enactment of this Act.

(g) The Council shall meet on a regular basis at the call of the Chairperson, or on the written request of one-third of the members. A majority of the appointed members of the Council shall constitute a quorum.

(h) Appointed members of the Council may not be employed by the Federal Government and shall be allowed travel expenses as authorized by section 5703 of title 5, United States Code.

(i) The Administrator of Nutrition Monitoring and Related Research (if appointed under section 101(d)) shall serve as the Executive Secretary of the Council.

(j) The Council shall terminate ten years after the final comprehensive plan is prepared under section 103.

FUNCTIONS OF THE COUNCIL

SEC. 202. The Council shall—

(1) provide scientific and technical advice on the development and implementation of all components of the coordinated program and the comprehensive plan;

(2) evaluate the scientific and technical quality of the comprehensive plan and the effectiveness of the coordinated program;

(3) recommend to the Secretaries, on an annual basis, means of enhancing the comprehensive plan and the coordinated program; and

(4) submit to the Secretaries annual reports that—

(A) shall contain the components specified in paragraphs (2) and (3); and

(B) shall be included in full in the biennial reports of the Secretaries to the President for transmittal to Congress under section 102(b).

TITLE III—DIETARY GUIDANCE

ESTABLISHMENT OF DIETARY GUIDELINES

SEC. 301. (a)(1) By January 1, 1990, and at least every five years thereafter, the Secretaries shall publish a report entitled "Dietary Guidelines for Americans". Each such report shall contain nutritional and dietary information and guidelines for the general public, and shall be promoted by each Federal agency in carrying out any Federal food, nutrition, or health program.

(2) The information and guidelines contained in each report required under paragraph (1) shall be based on the preponderance of the scientific and medical knowledge which is current at the time the report is prepared.

(b)(1) Any Federal agency which proposes to issue any dietary guidance for the general population or identified population subgroups, shall submit the text of such guidance to the Secretaries sixty days before the publication of the notice of availability for comment required to be published in the Federal Register under this section.

(2)(A) During the sixty-day review period established in paragraph (1), the Secretaries shall review and approve or disapprove such guidance to assure that the guidance either is consistent with the "Dietary Guidelines for Americans" or that the guidance is based on medical or new scientific knowledge which is determined to be valid by the Secretaries. If after such sixty-day period neither Secretary notifies the proposing agency that such guidance has been disapproved, then such guidance may be issued by the agency. If both Secretaries disapprove of such guidance, it shall be returned to the agency. If either Secretary finds that such guidance is inconsistent with the "Dietary Guidelines for Americans" and so notifies the proposing agency, such agency shall follow the procedures set forth in this subsection before disseminating such proposal to the public in final form. If after such sixty-day period, either Secretary disapproves such guidance as inconsistent with

the "Dietary Guidelines for Americans" the proposing agency shall—

(i) publish a notice in the Federal Register of the availability of the full text of the proposal and the preamble of such proposal which shall explain the basis and purpose for the proposed dietary guidance;

(ii) provide in such notice for a public comment period of thirty days; and

(iii) make available for public inspection and copying during normal business hours any comment received by the agency during such comment period.

(B) After review of comments received during the comment period either Secretary may approve for dissemination by the proposing agency a final version of such dietary guidance along with an explanation of the basis and purpose for the final guidance which addresses significant and substantive comments as determined by the proposing agency.

(C) Any such final dietary guidance to be disseminated under subparagraph (B) shall be announced in a notice published in the Federal Register, before public dissemination along with an address where copies may be obtained.

(D) If after the thirty-day period for comment as provided under subparagraph (A)(ii), both Secretaries disapprove a proposed dietary guidance, the Secretaries shall notify the Federal agency submitting such guidance of such disapproval, and such guidance may not be issued, except as provided in subparagraph (E).

(E) If a proposed dietary guidance is disapproved by both Secretaries under subparagraph (D), the Federal agency proposing such guidance may, within fifteen days after receiving notification of such disapproval under subparagraph (D), request the Secretaries to review such disapproval. Within fifteen days after receiving a request for such a review, the Secretaries shall conduct such review. If, pursuant to such review, either Secretary approves such proposed dietary guidance, such guidance may be issued by the Federal agency.

(3) For purposes of this subsection, the term "dietary guidance for the general population" does not include any rule or regulation issued by a Federal agency.

(4) For purposes of this subsection, the term "identified population subgroups" shall include, but not be limited to, groups based on factors such as age, sex, or race.

(c) This section does not place any limitations on—

(1) the conduct or support of any scientific or medical research by any Federal agency;

(2) the presentation of any scientific or medical findings or the exchange or review of scientific or medical information by any Federal agency; or

(3) the authority of the Food and Drug Administration under the provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321 et seq.).

NUTRITION TRAINING REPORT

SEC. 302. The Secretary of Health and Human Services, in consultation with the Secretaries of Agriculture, Education, and Defense, and the Director of the National Science Foundation, shall submit, within one year after the date of enactment of this Act, a report describing the appropriate Federal role in assuring that students enrolled in United States medical schools and physicians practicing in the United States have access to adequate training in the field of nutrition and its relationship to human health.

Mr. MITCHELL. Mr. President, I move to reconsider the vote.

Mr. WILSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MEASURES PLACED ON CALENDAR

Mr. MITCHELL. Mr. President, I ask unanimous consent that H.R. 3390, the Veterans Education Amendments Act of 1989, and H.R. 3199, the Veterans Health Professionals Education Amendments of 1989, be placed on the calendar.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

COMMERCE, JUSTICE, STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS, FISCAL YEAR 1990

Mr. MITCHELL. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 2991.

The ACTING PRESIDENT pro tempore laid before the Senate the following message from the House of Representatives:

Resolved, That the House disagree to the amendments of the Senate to the amendments of the House to the amendments of the Senate numbered 53, 171, and 191 to the bill (H.R. 2991) entitled "An Act making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 1990, and for other purposes", and asks a further conference with the Senate on the disagreeing votes of the two Houses thereon.

Ordered, That Mr. Smith of Iowa, Mr. Alexander, Mr. Early, Mr. Dwyer of New Jersey, Mr. Carr, Mr. Mollohan, Mr. Whitten, Mr. Rogers, Mr. Regula, Mr. Kolbe, and Mr. Conte be managers of the conference on the part of the House.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate insist on its amendments numbered 53, 171, and 191, and agree to a conference as requested by the House and that the Chair be authorized to appoint conferees with respect to the Commerce, Justice, State, Judiciary Appropriations Act for fiscal year 1990.

The ACTING PRESIDENT pro tempore. Is there objection to the request of the Senator from Maine?

There being no objection, the Presiding Officer (Mr. KOHL) appointed Mr. HOLLINGS, Mr. INOUYE, Mr. BUMPERS, Mr. LAUTENBERG, Mr. SASSER, Mr. ADAMS, Mr. BYRD, Mr. RUDMAN, Mr. STEVENS, Mr. HATFIELD, Mr. KASTEN, Mr. GRAMM, and Mr. MCCLURE conferees on the part of the Senate.

Mr. MITCHELL. Mr. President, I thank my colleague for his cooperation.

PRIVILEGE OF THE FLOOR

Mr. MITCHELL. Mr. President, one further request. I ask unanimous consent that floor privileges during today's impeachment proceedings of Judge Walter J. Nixon, Jr., be granted to the individuals listed on the document I now send to desk.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The names are as follows:

MANAGERS OF THE HOUSE OF REPRESENTATIVES

Representative Don Edwards.
Representative F. James Sensenbrenner, Jr.
Representative Benjamin L. Cardin.
Representative William Dannemeyer.

HOUSE MANAGERS STAFF

Alan I. Baron, Special Counsel.
William M. Jones, General Counsel.
Daniel M. Freeman, Counsel.
Peter Keith.
Colleen Kiko.
Katie Urban.
Kathleen Leroy.
Shelley Hettleman.

JUDGE NIXON AND REPRESENTATIVES

Judge Walter L. Nixon, Jr.
David O. Stewart.
Peter M. Brody.

SENATE

Martha Pope, Chief of Staff, Majority Leader.
Charles Kinney, Democratic Policy Committee.
George Carrenbauer, Democratic Policy Committee.
Anita Jensen, Senator Mitchell.
Rebecca Roberts, Office of President pro tempore.
Roy Greenway, Senator Cranston.
Alan Thomas, Senator Cranston.
Duke Short, Senator Thurmond.
Sheila Burke, Chief of Staff, Republican Leader.
Robert Dove, Republican Leader's Staff.
Dennis Shea, Republican Leader's Staff.
Jim Whittinghill, Republican Leader's Staff.
Richard Quinn, Republican Leader's Staff.
Mike Tongour, Assistant Republican Leader's Staff.
Michael Davidson, Senate Legal Counsel.
Morgan Frankel, Assistant Senate Legal Counsel & Committee Counsel.
Claire M. Sylvia, Assistant Senate Legal Counsel.
Jack Sousa, Rules Committee.
Jeff Peck, Judiciary Committee, Majority.
Jeff Nuechterlein, Judiciary Committee, Majority.
Terry Wooten, Judiciary Committee, Minority.
Thad Strom, Judiciary Committee, Minority.

IMPEACHMENT COMMITTEE

Donald A. Purdy, Jr., Counsel.
Anthony L. Harvey, Administrator.
P. Casey McGannon, Staff Assistant and Exhibits Clerk.
Isabel T. McVeigh, Staff Assistant and Journal Clerk.

MEMBER'S STAFF REPRESENTATIVES

Bob Redding, Senator Fowler.
Scott Williams, Senator Heflin.
Ellen Marshall, Senator Wirth.
David Chartier, Senator Reid.

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Kerry Walsh Skelly, Senator Robb.
Keenan Peck, Senator Kohl.
Kevin Dempsey, Senator Danforth.
Amy Dunathan, Senator Chafee.
John H. Moseman, Senator Murkowski.
Reginald E. Jones, Senator Jeffords.
Mary Beth Savary, Senator Mack.
Taylor Bowlden, Senator Symms.

ORDER OF PROCEDURE

The ACTING PRESIDENT pro tempore. The Senator from California is recognized.

Mr. WILSON. I thank the Chair.

(The remarks of Mr. WILSON pertaining to the introduction of S. 1835 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. The Chair recognizes the minority leader, Senator DOLE.

THE BUDGET PROCESS

Mr. DOLE. Mr. President, I will not delay the Senate. I know we have a number of votes and a number of Members have things to do after those votes. But I did want to include in the RECORD at this point a statement issued by the White House yesterday, a statement by the President with reference to the whole budget process and the reconciliation process, and to point out at least three things that the President points out.

He wants a truly clean reconciliation bill with real deficit reduction, which does not seem like it is too much to ask. There is not much deficit reduction in even the clean Senate bill and even less, as the President points out, in the House bill, where there could even be a minus instead of any savings. We could be going in the hole even further in the House bill.

Second, the President indicated that he did not want extraneous issues added to the reconciliation bill which is certainly in the agreement we made in the Senate, and I would hope the House would carry that out.

Third, the President indicated the Congress should pass a debt limit bill immediately to assure that the United States does not default. I think there has been some misinterpretation of the President's statement when he indicates, "If other issues—such as child care and capital gains—prove more difficult to resolve, we will continue to pursue them until satisfactory legislation is enacted." That, coupled with the fact that I have indicated we will not offer any capital gains amendment to the debt ceiling extension, I think has confused many people. It does not mean we have given up on the capital gains matter. We are still going to get some votes on the capital gains. Hopefully, we can have some vehicle and have a number of cloture votes to see if we can resolve our differences.

So I wanted to make it clear that the White House indicated at least 3 days ago they prefer not to get tied up in a debt ceiling battle with capital gains because of what it might do to the markets and the adverse impact it might have. But I think a careful reading of the President's statement will indicate what he is concerned about at this point. He has not given in on capital gains, but he is concerned about deficit reduction and keeping extraneous matters off the reconciliation bill.

Mr. President, I ask unanimous consent that the entire statement be printed in the RECORD.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

STATEMENT BY THE PRESIDENT

On February 9th, after only twenty days in office, I submitted a budget that would have reduced the fiscal year 1990 deficit to $91.1 billion. On April 14th, we reached a Bipartisan Budget Agreement with the Congress. We were encouraged by the prospect that, if fully implemented, the Agreement promised to reduce the FY '90 deficit to $99.4 billion. Unfortunately, the Bipartisan Agreement has not yet been implemented. As a result, we find ourselves having to use the fail-safe deficit reduction measure that the law requires: across-the-board spending cuts, known as "sequester."

Clearly, this approach would not be a first choice for any of us. It is, however, a necessary discipline in the absence of more satisfactory action.

If the across-the-board cuts remain in effect, sequester would produce $16.1 billion in budgetary savings for fiscal year 1990 without any increase in taxes. These are more substantial savings than in either the pending Senate- or House-passed reconciliation bills.

By our scoring, the Senate and House bills would save only $8.3 billion and $1.9 billion, respectively, after adjustment for payment date shifts and accounting changes. (If the House bill were adjusted to drop capital gains—as the Democratic leadership wishes—it would actually increase the deficit, rather than decrease it.) If the Senate bill's savings were adjusted for the pending repeal of catastrophic health insurance, as in the House bill, total savings in the Senate bill would drop to slightly more than $2 billion. In the face of deficits of well over $100 billion, $2 billion in net savings is far from enough. We must—and we can—do better.

We have tried to work constructively and cooperatively with the Congress in a true spirit of bipartisanship. I deeply regret the tone of partisanship that has entered the economic policy debate. I would very much have preferred a fair and balanced debate—and vote—on the merits. But the Congressional process has bogged down. Now, the stalemate must be broken. So, having consulted with the Republican Congressional leadership, I am calling upon the Congress to do three things:

First, the Congress should pass a truly clean reconciliation bill that produces real deficit reduction—without new taxes, without spending measures that increase the deficit in the future, and without scoring gimmicks. Any such reconciliation bill should achieve at least the $14 billion in reconciled deficit reduction agreed to in the Bipartisan Budget Agreement, after adjusting to offset any new spending measures.

I will not accept a reconciliation bill that fails to do the job that should be done. If the Congress cannot agree upon a clean reconciliation bill that fully meets the test of fiscal responsibility, we are prepared to manage the government under sequester. That is, we will continue to impose $16 billion in across-the-board spending cuts—as the law requires—for as long as it takes to reach agreement on a fiscally responsible bill.

Second, consistent with the Senate's expressed interest in a "clean" reconciliation bill without what it terms "extraneous" issues, the Congress should separate from the pending reconciliation bill such issues as child care, catastrophic health insurance, section 89, and capital gains. It should do so without applying its standard arbitrarily in a way that discriminates selectively against such issues. Congress should present to me for signature such legislation as may be mutually agreed on these subjects.

If we can reach agreement quickly on any of these issues—such as repeal of section 89 or catastrophic health inusrance—I would be prepared to sign a bill dealing with these promptly, provided it is not a reconciliation bill. If other issues—such as child care and capital gains—prove more difficult to resolve, we will continue to pursue them until satisfactory legislation is enacted. I remain firmly committed to both capital gains and a child care bill consistent with the principles embodied in my proposed legislation. I am confident that there is a majority for capital gains in both the House and the Senate, and will continue to seek every opportunity for the majority to express its will.

Third, the Congress should pass a debt limit bill immediately—to assure that the United States does not default.

Fortunately, the economy continues to grow. It is now in its 83rd consecutive month of growth—the second longest such period of growth in all of America's history. But, there is as much reason as ever to seek to reduce the deficit, to pass a long-term debt limit bill, and to advance legislation that can keep the economy growing.

QUORUM CALL

Mr. MITCHELL. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll and the following Senators entered the Chamber and answered to their names:

[Quorum No. 11]

Armstrong	Byrd	Kerrey
Boschwitz	Dixon	Kohl
Bryan	Dole	Mitchell
Bumpers	Hatfield	

The PRESIDENT pro tempore. A quorum is not present. The clerk will call the roll of the absentees.

Mr. MITCHELL. Mr. President, I move that the Sergeant at Arms be instructed to request the attendance of absent Senators and I ask for the yeas and nays.

The PRESIDENT pro tempore. Is the demand sustained? Obviously the demand is sustained.

The yeas and nays are ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Oklahoma [Mr. BOREN] and the Senator from New Jersey [Mr. BRADLEY] are necessarily absent.

Mr. SIMPSON. I announce that the Senator from Arizona [Mr. MCCAIN] is necessarily absent.

The PRESIDENT pro tempore. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 96, nays 1, as follows:

[Rollcall Vote No. 283 Leg.]

YEAS—96

Adams	Garn	McConnell
Armstrong	Glenn	Metzenbaum
Baucus	Gore	Mikulski
Bentsen	Gorton	Mitchell
Biden	Graham	Moynihan
Bingaman	Gramm	Murkowski
Bond	Grassley	Nickles
Boschwitz	Harkin	Nunn
Breaux	Hatch	Packwood
Bryan	Hatfield	Pell
Bumpers	Heflin	Pressler
Burdick	Heinz	Pryor
Burns	Helms	Reid
Byrd	Hollings	Riegle
Chafee	Inouye	Robb
Coats	Jeffords	Rockefeller
Cochran	Johnston	Roth
Cohen	Kassebaum	Rudman
Conrad	Kasten	Sanford
Cranston	Kennedy	Sarbanes
D'Amato	Kerrey	Sasser
Danforth	Kerry	Shelby
Daschle	Kohl	Simon
DeConcini	Lautenberg	Simpson
Dixon	Leahy	Specter
Dodd	Levin	Stevens
Dole	Lieberman	Symms
Domenici	Lott	Thurmond
Durenberger	Lugar	Wallop
Exon	Mack	Warner
Ford	Matsunaga	Wilson
Fowler	McClure	Wirth

NAYS—1

Humphrey

NOT VOTING—3

Boren	Bradley	McCain

So the motion was agreed to.

The PRESIDENT pro tempore. A quorum is present. There will be order in the Senate.

IMPEACHMENT OF JUDGE WALTER L. NIXON, JR.

The PRESIDENT pro tempore. Under the previous order, the hour of 10 a.m. having arrived and a quorum having been established, the Senate will resume its consideration of the articles of impeachment against Judge Walter L. Nixon, Jr. The managers on the part of the House and respondent and his party will now take their places in the well in the Chamber.

The Deputy Sergeant at Arms will make the proclamation.

The Deputy Sergeant at Arms, Jeanine Drysdale-Lowe, made the proclamation as follows:

Hear ye! Hear ye! Hear ye! All persons are commanded to keep silence, on pain of imprisonment, while the Senate of the United States is sitting for the trial of the articles of impeachment exhibited by the House of Representatives against Walter L. Nixon, Jr., U.S. district judge for the Southern District of Mississippi.

The PRESIDENT pro tempore. The majority leader is recognized.

Mr. MITCHELL. Mr. President, if I may have the attention of my colleagues.

The PRESIDENT pro tempore. The Senate will be in order. The majority leader is recognized.

Mr. MITCHELL. Mr. President, we will this morning be voting on two motions and, depending upon the outcome of those motions, on three articles of impeachment. That means a maximum potential of five votes. In view of the importance of these proceedings, in the interest of fairness to all concerned and also in the interest of maintaining proper decorum in the Senate, I ask that Senators remain in their seats during the voting and respond when their name is called by the clerk. That will also have the added benefit of expediting the proceedings.

The first rollcall vote will, in accordance with our practices, be a 15-minute rollcall vote. The subsequent rollcall votes need only take such time as to permit each Senator to respond. Therefore, I urge Senators to remain in their seats and to respond when called by the clerk on each vote, as we did in the prior impeachment proceeding recently concluded.

Also, Mr. President, I ask unanimous consent that at any time in the proceeding which they choose, Judge Nixon and his counsel be permitted to excuse themselves.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. MITCHELL. So counsel and the judge know that at any time they wish, following the completion of the vote, they may excuse themselves at any time.

Mr. President, the Senate deliberated yesterday for 6 hours on the articles of impeachment against Judge Walter L. Nixon, Jr. We meet this morning to vote on Judge Nixon's two pending motions and, depending upon the disposition of those motions, on the three articles of impeachment.

JUDGE NIXON'S MOTION FOR TRIAL BY THE SENATE

The PRESIDENT pro tempore. The Senate will now proceed to vote on Judge Nixon's first motion. The clerk will read Judge Nixon's motion for trial by the Senate.

The assistant legislative clerk read as follows:

JUDGE NIXON'S MOTION FOR TRIAL BY THE SENATE

Respondent Walter L. Nixon, Jr., through his undersigned attorneys, hereby moves that the Senate trial in this case be convened before and conducted in the presence of the entire body of the Senate, as required by article I, section 3, clause 6 of the Constitution, as set forth at greater length in the attached supporting Memorandum.

The PRESIDENT pro tempore. The majority leader is recognized.

Mr. MITCHELL. Mr. President, I ask for the yeas and nays.

The PRESIDENT pro tempore. Is the demand sustained? Obviously, the demand is sustained.

The yeas and nays were ordered.

VOTE ON JUDGE NIXON'S MOTION FOR TRIAL BY THE SENATE

The PRESIDENT pro tempore. A "yea" vote would be in favor of granting Judge Nixon's motion. A "nay" vote would be in opposition to granting Judge Nixon's motion. The clerk will call the roll and please repeat the responses.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Oklahoma [Mr. BOREN] and the Senator from New Jersey [Mr. BRADLEY] are necessarily absent.

I further announce that, if present and voting, the Senator from New Jersey [Mr. BRADLEY] would vote "nay."

Mr. SIMPSON. I announce that the Senator from Arizona [Mr. MCCAIN] is necessarily absent.

The PRESIDENT pro tempore. Are there any Senators who have not voted?

The result was announced—yeas 7, nays 90, as follows:

[Rollcall Vote 284]

(Judge Nixon's motion for trial by the Senate—Court of Impeachment—Judge Walter L. Nixon, Jr.)

YEAS—7

Heflin	Packwood	Wallop
Helms	Sanford	
Mack	Specter	

NAYS—90

Adams	Dole	Kerry
Armstrong	Domenici	Kohl
Baucus	Durenberger	Lautenberg
Bentsen	Exon	Leahy
Biden	Ford	Levin
Bingaman	Fowler	Lieberman
Bond	Garn	Lott
Boschwitz	Glenn	Lugar
Breaux	Gore	Matsunaga
Bryan	Gorton	McClure
Bumpers	Graham	McConnell
Burdick	Gramm	Metzenbaum
Burns	Grassley	Mikulski
Byrd	Harkin	Mitchell
Chafee	Hatch	Moynihan
Coats	Hatfield	Murkowski
Cochran	Heinz	Nickles
Cohen	Hollings	Nunn
Conrad	Humphrey	Pell
Cranston	Inouye	Pressler
D'Amato	Jeffords	Pryor
Danforth	Johnston	Reid
Daschle	Kassebaum	Riegle
DeConcini	Kasten	Robb
Dixon	Kennedy	Rockefeller
Dodd	Kerrey	Roth

Rudman	Simon	Thurmond
Sarbanes	Simpson	Warner
Sasser	Stevens	Wilson
Shelby	Symms	Wirth

ABSENT, NOT VOTING, OR EXCUSED FROM VOTING—3

Boren	Bradley	McCain

The PRESIDENT pro tempore. On this vote, there are 7 yeas, 90 nays. Judge Nixon's motion for trial by the Senate is denied.

JUDGE NIXON'S MOTION TO DISMISS IMPEACHMENT ARTICLE III

The PRESIDENT pro tempore. The clerk will now read Judge Nixon's motion to dismiss impeachment article III.

The legislative clerk read as follows:

Judge Walter L. Nixon, Jr. through his undersigned counsel, hereby moves for an order of the Senate dismissing Impeachment Article III on the grounds stated:

1. The allegations that an impeachable offense has been made out if "Judge Nixon has raised substantial doubt as to his judicial integrity, undermined confidence in the integrity and impartiality of the judiciary, betrayed the trust of the people of the United States, * * * and brought disrepute on the Federal courts and the administration of justice by the Federal courts. * * *"

These allegations do not make out an impeachable offense under Article II, sec. 4 of the Constitution.

2. Specifications III(2) (A), (D), (E), (F), and (G), which are redundant and multiplicious of allegations in Impeachment Article I and Article II.

3. The Article, which charges five different offenses for each of fourteen specific events, thus present seventy allegations. Such a complex and confusing Article is both unfair and completely unworkable.

The PRESIDENT pro tempore. The majority leader is recognized.

Mr. MITCHELL. Mr. President, I ask for the yeas and nays.

The PRESIDENT pro tempore. Is the demand for the yeas and nays sustained? Obviously, the demand is sustained.

The yeas and nays were ordered.

VOTE ON JUDGE NIXON'S MOTION TO DISMISS IMPEACHMENT ARTICLE III

The PRESIDENT pro tempore. A "yea" vote would be in favor of granting Judge Nixon's motion. A "nay" vote would be in opposition to granting Judge Nixon's motion. The clerk will call the roll, and please repeat the response.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Oklahoma [Mr. BOREN] and the Senator from New Jersey [Mr. BRADLEY] are necessarily absent.

I further announce that, if present and voting, the Senator from New Jersey [Mr. BRADLEY] would vote "nay."

Mr. SIMPSON. I announce that the Senator from Arizona [Mr. MCCAIN] is necessarily absent.

The PRESIDENT pro tempore. Are there any Senators in the Chamber who have not voted or who wish to change their vote?

The result was announced—yeas 34, nays 63, as follows:

[Rollcall Vote No. 285]

(Judge Nixon's motion to dismiss impeachment article III—Court of Impeachment—Judge Walter L. Nixon, Jr.)

YEAS—34

Adams	Hatch	Metzenbaum
Biden	Hatfield	Moynihan
Bingaman	Heflin	Murkowski
Bryan	Johnston	Pryor
Burdick	Kasten	Reid
Chafee	Kerrey	Sanford
Conrad	Kerry	Sasser
Dixon	Kohl	Simon
Dole	Levin	Symms
Domenici	Lieberman	Wallop
Exon	Mack	
Graham	McClure	

NAYS—63

Armstrong	Garn	Mikulski
Baucus	Glenn	Mitchell
Bentsen	Gore	Nickles
Bond	Gorton	Nunn
Boschwitz	Gramm	Packwood
Breaux	Grassley	Pell
Bumpers	Harkin	Pressler
Burns	Heinz	Riegle
Byrd	Helms	Robb
Coats	Hollings	Rockefeller
Cochran	Humphrey	Roth
Cohen	Inouye	Rudman
Cranston	Jeffords	Sarbanes
D'Amato	Kassebaum	Shelby
Danforth	Kennedy	Simpson
Daschle	Lautenberg	Specter
DeConcini	Leahy	Stevens
Dodd	Lott	Thurmond
Durenberger	Lugar	Warner
Ford	Matsunaga	Wilson
Fowler	McConnell	Wirth

ABSENT, NOT VOTING, OR EXCUSED FROM VOTING—3

Boren	Bradley	McCain

The PRESIDENT pro tempore. On this vote, 34 Senators have voted in the affirmative, 63 Senators have voted in the negative. Therefore, Judge Nixon's motion to dismiss the impeachment article No. III is denied.

ARTICLE I

The PRESIDENT pro tempore. The clerk will now read the first article of impeachment.

The assistant legislative clerk read as follows:

ARTICLE I

On July 18, 1984, Judge Nixon testified before a Federal grand jury empaneled in the United States District Court for the Southern District of Mississippi (Hattiesburg Division) to investigate Judge Nixon's business relationship with Wiley Fairchild and the handling of the criminal prosecution of Fairchild's son, Drew Fairchild, for drug smuggling. In the course of his grand jury testimony and having duly taken an oath that he would tell the truth, the whole truth, and nothing but the truth, Judge Nixon did knowingly and contrary to his oath make a material false or misleading statement to the grand jury.

The false or misleading statement was, in substance, that Forrest County District Attorney Paul Holmes never discussed the Drew Fairchild case with Judge Nixon.

Wherefore, Judge Walter L. Nixon, Jr., is guilty of an impeachable offense and should be removed from office.

VOTE ON ARTICLE I

The PRESIDENT pro tempore. On this vote, the yeas and nays are automatic.

The Chair reminds the Senate that in voting on articles of impeachment, each Senator, when his or her name is called, would stand in his or her place and vote guilty or not guilty.

Senators how say you, is the respondent Walter L. Nixon, Jr., guilty or not guilty?

The clerk will call the roll.

Mr. CRANSTON. I announce that the Senator from Oklahoma [Mr. BOREN] and the Senator from New Jersey [Mr. BRADLEY] are necessarily absent.

I further announce that, if present and voting, the Senator from New Jersey [Mr. BRADLEY] would vote "guilty."

Mr. SIMPSON. I announce that the Senator from Arizona [Mr. MCCAIN] is necessarily absent.

The PRESIDENT pro tempore. Have all Senators voted?

The result was announced—guilty 89, not guilty 8, as follows:

[Rollcall Vote No. 286]

(Subject: Article I—Court of Impeachment—Judge Walter L. Nixon)

YEAS—89

Adams	Fowler	Matsunaga
Armstrong	Garn	McConnell
Baucus	Glenn	Metzenbaum
Bentsen	Gore	Mikulski
Biden	Gorton	Mitchell
Bingaman	Graham	Moynihan
Bond	Gramm	Murkowski
Boschwitz	Grassley	Nickles
Breaux	Harkin	Nunn
Bryan	Hatch	Packwood
Bumpers	Heflin	Pressler
Burdick	Heinz	Pryor
Burns	Helms	Reid
Byrd	Hollings	Riegle
Coats	Humphrey	Robb
Cochran	Inouye	Rockefeller
Cohen	Jeffords	Roth
Conrad	Johnston	Rudman
Cranston	Kassebaum	Sarbanes
D'Amato	Kasten	Shelby
Danforth	Kennedy	Simon
Daschle	Kerrey	Simpson
DeConcini	Kerry	Specter
Dixon	Kohl	Stevens
Dodd	Lautenberg	Thurmond
Dole	Leahy	Wallop
Domenici	Levin	Warner
Durenberger	Lieberman	Wilson
Exon	Lott	Wirth
Ford	Lugar	

NAYS—8

Chafee	McClure	Sasser
Hatfield	Pell	Symms
Mack	Sanford	

ABSENT, NOT VOTING, OR EXCUSED FROM VOTING—3

Boren	Bradley	McCain

The PRESIDENT pro tempore. On the first article of impeachment, 89 Senators have voted guilty, 8 Senators have voted not guilty. Two-thirds of the Members present having voted guilty, the Senate accordingly adjudges that the respondent, Walter L. Nixon, Jr., is guilty as charged in this first article.

ARTICLE II

The PRESIDENT pro tempore. The clerk will now read the second article of impeachment.

The legislative clerk read as follows:

ARTICLE II

On July 18, 1984, Judge Nixon testified before a Federal grand jury empaneled in the United States District Court for the Southern District to Mississippi to investigate Judge Nixon's business relationship with Wiley Fairchild and the handling of the prosecution of Fairchild's son, Drew Fairchild, for drug smuggling. In the course of his grand jury testimony and having duly taken an oath that he would tell the truth, the whole truth, and nothing but the truth, Judge Nixon did knowingly and contrary to his oath make a material false or misleading statement to the grand jury.

The false or misleading statement was, in substance, that Judge Nixon had nothing whatsoever officially or unofficially to do with the Drew Fairchild case in Federal court or State court; and that Judge Nixon "never handled any part of it, never had a thing to do with it at all, and never talked to anyone, State or Federal prosecutor or judge, that in any way influenced anybody" with respect to the Drew Fairchild case.

Wherefore, Judge Walter L. Nixon, Jr., is guilty of an impeachable offense and should be removed from office.

VOTE ON ARTICLE II

The PRESIDENT pro tempore. Senators how say you? Is the respondent, Walter L. Nixon, Jr., guilty or not guilty?

The clerk will call the roll, and please repeat the responses.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Oklahoma [Mr. BOREN] and the Senator from New Jersey [Mr. BRADLEY] are necessarily absent.

I further announce that, if present and voting, the Senator from New Jersey [Mr. BRADLEY] would vote "guilty."

Mr. SIMPSON. I announce that the Senator from Arizona [Mr. MCCAIN] is necessarily absent.

The result was announced—guilty 78, not guilty 19, as follows:

[Rollcall Vote No. 287]

(Subject: Article II—Court of Impeachment—Judge Walter L. Nixon, Jr.)

GUILTY—78

Adams	Dixon	Kassebaum
Baucus	Dodd	Kasten
Bentsen	Exon	Kennedy
Biden	Ford	Kerrey
Bingaman	Fowler	Kerry
Bond	Garn	Kohl
Boschwitz	Glenn	Lautenberg
Breaux	Gore	Leahy
Bryan	Gorton	Levin
Bumpers	Graham	Lieberman
Burdick	Gramm	Lugar
Burns	Grassley	Matsunaga
Byrd	Harkin	McConnell
Coats	Hatch	Metzenbaum
Cohen	Heflin	Mikulski
Conrad	Heinz	Mitchell
Cranston	Helms	Moynihan
D'Amato	Hollings	Nickles
Danforth	Humphrey	Nunn
Daschle	Inouye	Pressler
DeConcini	Johnston	Pryor
Reid	Rudman	Specter
Riegle	Sarbanes	Stevens
Robb	Shelby	Warner
Rockefeller	Simon	Wilson
Roth	Simpson	Wirth

NOT GUILTY—19

Armstrong	Jeffords	Sanford
Chafee	Lott	Sasser
Cochran	Mack	Symms
Dole	McClure	Thurmond
Domenici	Murkowski	Wallop
Durenberger	Packwood	
Hatfield	Pell	

ABSENT, NOT VOTING, OR EXCUSED FROM VOTING—3

Boren	Bradley	McCain

The PRESIDENT pro tempore. All Senators having voted, on the second article of impeachment, 78 Senators have voted guilty; 19 Senators have voted not guilty.

Two-thirds of the Members present having voted guilty, the Senate adjudges that the respondent, Walter L. Nixon, Jr., is guilty as charged in this article.

ARTICLE III

The PRESIDENT pro tempore. The clerk will now read the third article of impeachment.

The assistant legislative clerk read as follows:

ARTICLE III

By virtue of his office as a judge of the United States District Court for the Southern District of Mississippi, Judge Nixon is required to uphold the integrity of the judiciary, to avoid impropriety and the appearance of impropriety, and to obey the laws of the United States.

Judge Nixon has raised substantial doubt as to his judicial integrity, undermined confidence in the integrity and impartiality of the judiciary, betrayed the trust of the people of the United States, disobeyed the laws of the United States and brought disrepute on the Federal courts and the administration of justice by the Federal courts by the following:

After entering into an oil and gas investment with Wiley Fairchild, Judge Nixon conversed with Wiley Fairchild, Carroll Ingram, and Forrest County District Attorney Paul Holmes concerning the State criminal drug conspiracy prosecution of Drew Fairchild, the son of Wiley Fairchild, and thereafter concealed those conversations as follows:

(1) Judge Nixon concealed those conversations through one or more material false or misleading statements knowingly made to an attorney from the United States Department of Justice and a special agent of the Federal Bureau of Investigation during an interview of Judge Nixon conducted in Biloxi, Mississippi, on April 19, 1984. The substance of the false or misleading statements included the following:

(A) Judge Nixon never discussed with Wiley Fairchild anything about Wiley's son's case.

(B) Wiley Fairchild never brought up his son's case.

(C) At the time of the interview Judge Nixon had no knowledge of the Drew Fairchild case and did not even know Drew Fairchild existed, except for what the judge previously read in the newspaper and what he learned from the questioners in the interview.

(D) Nothing was done or nothing was ever mentioned about Wiley Fairchild's son.

(E) Judge Nixon had never heard about the Drew Fairchild case, except what he told the questioners in the interview, and certainly had nothing to do with the case.

(F) Judge Nixon had done nothing to influence the Drew Fairchild case.

(G) State prosecutor Paul Holmes never talked to Judge Nixon about the Drew Fairchild case.

(2) Judge Nixon further concealed his conversations with Wiley Fairchild, Paul Holmes, and Carroll Ingram concerning the Drew Fairchild case by knowingly giving one or more material false or misleading statements to a Federal grand jury during testimony under oath in Hattiesburg, Mississippi, on July 18, 1984. The substance of the false or misleading statements included the following:

(A) Paul Holmes never discussed the Drew Fairchild case with Judge Nixon.

(B) To the best of his knowledge and recollection, Judge Nixon did not know of any reason he would have met with Wiley Fairchild after the Nixon-Fairchild oil and gas investment was finalized in February 1981.

(C) Judge Nixon gave the grand jury all the information that he had and that he could and had withheld nothing during his grand jury testimony.

(D) Judge Nixon had nothing whatsoever unofficially to do with the Drew Fairchild criminal case in State court.

(E) Judge Nixon never talked to anyone, including the State prosecutor, about the Drew Fairchild case.

(F) Judge Nixon never had a thing to do with the Drew Fairchild case at all.

(G) Judge Nixon "never talked to anyone, State or Federal, prosecutor or judge, in any way influenced anybody" with respect to the Drew Fairchild case.

Wherefore, Judge Walter L. Nixon, Jr., is guilty of an impeachable offense and should be removed from office.

VOTE ON ARTICLE III

The PRESIDENT pro tempore. Senators, how say you? Is the respondent, Walter L. Nixon, Jr., guilty or not guilty?

The clerk will call the roll on the third article of impeachment, and please repeat the responses.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Oklahoma [Mr. BOREN] and the Senator from New Jersey [Mr. BRADLEY] are necessarily absent.

I further announce that, if present and voting, the Senator from New Jersey [Mr. BRADLEY] would vote "guilty."

Mr. SIMPSON. I announce that the Senator fom Arizona [Mr. MCCAIN] is necessarily absent.

The result was announced—guilty 57, not guilty 40, as follows:

[Rollcall Vote No. 288]

(Subject: Article III—Court of Impeachment—Walter L. Nixon, Jr.)

GUILTY—57

Armstrong	Bumpers	D'Amato
Bentsen	Byrd	Danforth
Bond	Coats	Daschle
Boschwitz	Cochran	DeConcini
Breaux	Cohen	Dodd

Durenberger	Jeffords	Riegle
Ford	Kassebaum	Robb
Fowler	Kennedy	Rockefeller
Garn	Lautenberg	Roth
Glenn	Leahy	Rudman
Gore	Lott	Sarbanes
Gorton	Lugar	Shelby
Gramm	Matsunaga	Simpson
Grassley	McConnell	Specter
Heinz	Mikulski	Stevens
Helms	Mitchell	Thurmond
Hollings	Nickles	Warner
Humphrey	Pell	Wilson
Inouye	Pressler	Wirth

NOT GUILTY—40

Adams	Graham	Metzenbaum
Baucus	Harkin	Moynihan
Biden	Hatch	Murkowski
Bingaman	Hatfield	Nunn
Bryan	Heflin	Packwood
Burdick	Johnston	Pryor
Burns	Kasten	Reid
Chafee	Kerrey	Sanford
Conrad	Kerry	Sasser
Cranston	Kohl	Simon
Dixon	Levin	Symms
Dole	Lieberman	Wallop
Domenici	Mack	
Exon	McClure	

ABSENT, NOT VOTING, OR EXCUSED FROM VOTING—3

Boren	Bradley	McCain

The PRESIDENT pro tempore. Have all Senators in the Chamber voted?

Upon this article of impeachment, 57 Senators having voted guilty, 40 Senators having voted not guilty, less than two-thirds of the Members present having voted guilty, the Senate adjudges that the respondent, Walter L. Nixon, Jr., is not guilty as charged in the third article of impeachment.

The Chair directs judgment to be entered in accordance with the vote of the Senate, as follows:

The Senate, having tried Walter L. Nixon, Jr., U.S. district judge for the Southern District of Mississippi, upon three articles of impeachment exhibited against him by the House of Representatives, and two-thirds of the Senators present having found him guilty of the charges contained in articles I and II of the articles of impeachment, it is, therefore, ordered and adjudged that the said Walter L. Nixon, Jr., be, and he is hereby, removed from office.

The majority leader is recognized.

Mr. MITCHELL. Mr. President, I send to the desk an order.

The PRESIDING pro tempore. The clerk will report the order.

The legislative clerk read as follows:

Ordered, That the Secretary be directed to communicate to the Secretary of State, as provided by rule XXIII of Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials, and also to the House of Representatives the judgment of the Senate in the case of Walter L. Nixon, Jr., and transmit a certified copy of the judgment to each.

The PRESIDENT pro tempore. Without objection, the order will be entered and adjudged.

The majority leader.

Mr. MITCHELL. Mr. President, I ask unanimous consent that Senators may be permitted within 7 days from today to have printed in the RECORD opinions or statements explaining their votes.

The PRESIDENT pro tempore. Without objection, it is so ordered.

THE IMPEACHMENT OF JUDGE NIXON

Mr. LEVIN. Mr. President, in the matter of the impeachment of Judge Walter Nixon, I decided to vote for conviction on the basis of articles I and II.

Articles I and II allege that Judge Nixon made false and misleading statements to a Federal grand jury. Both counts are based upon Federal criminal charges for which Judge Nixon was found guilty in 1986 after a trial by jury. His appeals of this conviction have been exhausted, and he is now serving a sentence of 5 years imprisonment for his crimes. I have reviewed the facts and record underlying the conviction and find that they support the jury's finding of wrongdoing. Thus, I accept the jury's finding of guilt as evidence of Judge Nixon's making false and misleading statements to the grand jury as set forth in articles I and II.

A criminal conviction is not conclusive, in and of itself, of a person's guilt in an impeachment proceeding. Nor does it relieve the Senate of its responsibility to determine whether a respondent has committed high crimes and misdeameanors which justify removal from office. At the same time, a guilty verdict reached in accordance with American principles of criminal justice, after due process, is not devoid of significance. It represents the unanimous, considered finding of an impartial panel of American citizens charged to reach this verdict only when the evidence of guilt is beyond a reasonable doubt. It demand our attention.

The level of proof required for a criminal conviction—beyond a reasonable doubt—is tougher than what is required for the Senate to remove an official from office. The due process requirements in a criminal matter—including the right to a jury trial—are tougher than those applicable in an impeachment proceeding. These extra safeguards are constitutional requirements to protect the presumption of innocence and permit criminal sanctions only when clearly deserved. It also means that when a finding of guilt occurs in a criminal proceeding and in accordance with our laws, we can view it as a prudent determination reached in the context of many protections for the defendant.

Some have suggested that, in deciding the matter of Judge Nixon's impeachment, we should not consider his criminal conviction. I disagree. Given the higher burden of proof and stronger due process protections that apply to a criminal trial, it is appropriate that we take note of the guilty verdict and consider the jury's finding of criminal wrongdoing as evidence of the high crimes and misdemeanors charged in the impeachment, provided that we are satisfied that the record supports the verdict, due process was accorded, and the wrongdoing at issue is sufficient to warrant removal from office.

The Constitution gives the Senate "the sole power to try all impeachments" and states that "the trial of all crimes except impeachment shall be by jury." (Article I, section 3; and article II, section 2.) These provisions require the Senate to act as the factfinder in each impeachment proceeding—since factfinding is at the heart of trying any case—and to determine, as individuals and as a body, whether the respondent is guilty of high crimes and misdemeanors so as to require removal from office.

While we cannot abdicate our responsibility as factfinders by deeming guilty verdicts to be conclusive evidence of high crimes and misdemeanors, neither are we required to ignore a guilty verdict in a criminal trial on the same charges that underlie an article of impeachment. Indeed, by framing articles which repeat criminal charges, the House invites us to make the connection between the two proceedings.

Would we be here but for Judge Nixon's conviction? I doubt it, since there is a reasonably supportable, benign explanation of his testimony before the grand jury. But what is clear and convincing—what is true beyond a reasonable doubt—what is true beyond any doubt—is that following a fair hearing Judge Nixon was convicted of perjury based on the very same statements before us in this impeachment proceeding.

In the impeachment involving Judge Harry Claiborne, one of the articles of impeachment asked the Senate to remove him from office because of his prior criminal conviction. The format of that article was and is the most forthright way to proceed in a case of impeachment following a criminal conviction. The Senate, however, by a vote of 46 guilty, 17 not guilty and 35 present, failed to adopt that article in the Claiborne matter, apparently because some felt its wording did not give enough recognition to the Senate's obligation to act as an independent factfinder and to go behind any criminal conviction. But I believe, if we examine a relevant guilty verdict, determine that the record supports it and that due process was provided, while we are not bound to follow it, we can, if we choose, rely on it to provide the factual determination needed to vote guilty on an article of impeachment. I choose to do so in this matter, because of my belief that the Federal judiciary should not include persons recently convicted of serious crimes after a fair trial, where the record sup-

ports the guilty verdict and the person's appeals have been exhausted.

The practice of factfinders relying on findings made in other legal proceedings is called collateral estoppel and is a long-standing, well-established principle of American law. I believe it is particularly appropriate for us to use that doctrine in the matter of Judge Nixon, because of the Senate's refusal to allow him to conduct an impeachment trial before the full Senate. Because most of us were not members of the Senate committee that heard the evidence in this matter and were not present to evaluate the demeanor of the witnesses, we are at a disadvantage in making the factual findings required by this proceeding. Under such circumstances, I believe it is even more appropriate to rely heavily on the criminal conviction of Judge Nixon, where the jury heard all of the evidence and reached a unanimous conclusion on the very issues before us, using the toughest standard of proof required in the American legal system.

A distinction should be made here between criminal trials which result in a finding of "guilty" versus a finding of "not guilty." A finding of guilt is made only when a jury unanimously agrees that the evidence demonstrates beyond a reasonable doubt that a crime was committed. A "not guilty" verdict results whenever a jury is not convinced that the evidence reaches this high level of proof. And because of that high level of proof in criminal trials, one cannot equate a finding of "not guilty" with a finding of innocence. That is why a verdict of "not guilty" in a criminal trial does not restrict the Senate's freedom to act on articles of impeachment, as in the case involving Judge Alcee Hastings. Evidence which may not sustain a finding of criminal guilt may yet be sufficient to satisfy us that a person should be removed from office.

I did not vote for conviction on article III, because much of that article depends upon statements made by Judge Nixon during an interview with the Department of Justice in April 1984. These statements were not part of the criminal charges for which Judge Nixon was convicted. The judge's statements to the grand jury took place almost 3 months after the interview, after he had time to recollect and think through his answers so as not to be misleading. The record amply supports the finding in the criminal trial that Judge Nixon's statements to the grand jury were false and misleading and constituted perjury. Those are the statements cited in articles I and II, and it is on those articles that I vote to convict Judge Nixon and remove him from office.

There is one last point. I voted no on Judge Nixon's motion for a full trial before the Senate, because I based my vote to remove Judge Nixon from office primarily on his criminal conviction following a fair trial and the exhaustion of his appeals. If there were no prior conviction, it would be my inclination, upon the request of a respondent, to grant a trial before the full Senate or for the respondent to testify under oath before the full Senate, unless either the witnesses' credibility were not a significant factor in the proceeding or unless I were on the impeachment committee which personally heard the testimony and no other Senator, who was not a committee member, sought such a hearing or testimony before the full Senate.

EXPLANATION OF IMPEACHMENT VOTE

Mr. SANFORD. Mr. President, it has been obvious since the first session that Judge Walter L. Nixon, Jr., was going to be impeached. Even if the Senate were to conclude that he had been unjustly convicted by the jury, it would be difficult to return to the Federal bench a judge with a cloud of conviction for perjury, a particularly odious offense for the judicial system.

Understanding he would indeed be impeached, I decided to vote to acquit Judge Walter L. Nixon, Jr., to protest this criminal investigative device of failing to establish a real crime, and then searching around in the ashes for bits of perjury. I also voted to acquit because: First, the false statements, if made, were of trivial matters not related to an actual crime; second, the case against Judge Nixon was contrived and manufactured by the Justice Department, and third, grounded, at least in part, on testimony written for a key witness by Justice Department employees.

It is more than regrettable that the Justice Department made a criminal of this judge.

THE IMPEACHMENT OF FEDERAL DISTRICT JUDGE WALTER L. NIXON, JR.

Mr. GRASSLEY. Mr. President, impeachment, as provided for in article II, section 4 of the Constitution, is not a criminal proceeding, even though the Constitution makes use of traditional criminal law terminology, such as:

Removal from office on "conviction of treason, bribery, or other high crimes and misdemeanors" (article II, section 4), or

"The Trial of all crimes, except in cases of impeachment, shall be by jury" (article III, section 2(3)), or

The President's power to grant "pardons for offenses against the United States, except in cases of impeachment" (article II, section 2(1)).

Nor is impeachment designed to further punish one already convicted of a felony and serving a sentence for that conviction, such as Walter L. Nixon.

Rather, impeachment—a solemn and grave exercise of granted power—is a remedial measure, entrusted to Congress by the Constitution.

The power of impeachment enables Congress—by removing from office those persons unfit to hold high positions of public trust—to protect the public.

Although the great power of removal from office is rarely employed, the Congress should not retreat from the proper exercise of its constitutional responsibilities—after the careful weighing of all evidence—when warranted.

A lifetime appointment to the Federal bench—as provided by article III of the Constitution—is a civil office of public trust (as described in article II) that is subject to the legislative branch's article I power of impeachment.

A Federal judge is not confirmed directly by the people through the electoral process. Rather, a Federal judge is confirmed by the appointment process, mandated by the Constitution to be exercised by the executive and legislative branches.

To be entrusted with a lifetime office that has the potential power of depriving individuals of their liberty and property, is, indeed, a very great responsibility.

Consequently, a Federal judge must subscribe to the highest ethical and moral standards. At a minimum, in their words and deeds, judges must be beyond reproach or suspicion in order for there to be integrity and impartiality in the administration of justice and independence in the operation of our judicial system.

Has Judge Nixon met the standard?

The judge became the subject of a Federal investigation due to his financial dealings with a Mississippi businessman, Wiley Fairchild, and his (Nixon's) involvement with the prosecutor, Paul "Bud" Holmes, in a State criminal case involving drug smuggling—the defendant in the case being Fairchild's son, Drew.

Based upon a 1984 FBI-Department of Justice interview and later sworn testimony before a Federal grand jury regarding his financial dealings with Wiley Fairchild and his alleged involvement with the State criminal case against Drew Fairchild, the judge was indicted on one count of accepting an unlawful gratuity and three counts of perjury in 1985.

He subsequently was convicted by a Federal jury in February 1986, of two counts of perjury and sentenced to 5 years in prison. He was aquitted of the other counts. He is currently serving that sentence.

The fifth circuit upheld his conviction, including his postconviction allegations of prosecutorial misconduct. That court also concluded the judge received a fair trial. His petition for certiorari has been denied by the Supreme Court.

In May 1989—after having exhausted all of his procedural remedies and based upon a recommendation of removal from office by the U.S. Judicial Conference—the House voted 417-0 in favor of three articles of impeachment against Judge Nixon.

Criminal conduct, prosecution, and conviction is not a prerequisite for impeachment. Office holders have been removed from office for conduct that was not a violation of the criminal law.

However, in order to find Judge Nixon not guilty, we must defer to the judge's defense against the articles of impeachment, by resolving every ambiguity in this case in his favor.

Among other points, the judge contends that:

His testimony has been completely consistent throughout his case. He literally never spoke with "Bud" Holmes about the Drew Fairchild case;

While testifying before the grand jury, he did not think of any conversation with Wiley Fairchild, either in person or over the telephone with "Bud" Holmes, but they were somewhere in his memory, they just never came to his mind;

The House managers have given no plausible basis for concluding that he purposefully concealed his conversations with Wiley Fairchild and "Bud" Holmes. In other words, we must find that it is plausible that he had the conversations in his memory, but they just never came to his mind;

Therefore, his testimony before the grand jury was literally true. He did have conversations, but they were of no significance to him, so they did not come to his mind;

The House managers are demanding testimonial perfection from him, when no prosecution witness originally thought of the Nixon-Fairchild-Holmes conversations during their testimony before the grand jury;

The date of the conversations is not before Drew Fairchild's case was "passed to the file," but sometime thereafter—meaning the judge could not have influenced the case;

The House's case relies on the testimony of Wiley Fairchild and "Bud" Holmes, whose eventual plea bargains cast doubts upon their credibility;

The information he supposedly withheld during his interview and grand jury testimony was of no particular significance, nor was it material. Therefore, the conversations in question constitute no offense;

He was targeted for prosecution because he ruled against the Government in an unrelated case and that the Department of Justice engaged in prosecutorial misconduct against him.

Whatever burden of proof individual Senators may utilize, common sense does not allow me to conclude that Judge Nixon's version of the facts squares with the case against him.

His conduct from the time of his initial aquaintance with Wiley Fairchild just doesn't make any sense to me.

Judge Nixon asks that the Senate believe the semantic and technical differences he employs to explain his testimony before the grand jury. At various stages of his arguments, these grand jury statements are either honest mistakes, or they were made with information he claims was somewhere in his memory, but just never came to his mind.

Could it be that Judge Nixon's statements before the grand jury were premediated?

It should be remembered that the jury at his criminal trial apparently determined that Judge Nixon's arguments regarding the nature of his statements were transparencies.

Judge Nixon is asking the Senate to do something the Fifth Circuit Court of Appeals would not do, and something the Supreme Court would not even consider doing. And, he is asking the Senate to do something it does not have the power to do.

In essence, Judge Nixon is asking the Senate to overturn the verdict of the jury empaneled to hear the case against him.

My colleagues must be mindful of the result if they find Judge Nixon not guilty of the articles of impeachment brought by the House of Representatives. Upon his release from Federal custody, the Senate would be sending a convicted felon to the Southern District of Mississippi to sit in judgment of others who may come before him.

Mr. President, the evidence belies Judge Nixon's version of the facts. His statements regarding this matter demonstrate that he doesn't deserve the high privilege of sitting on the Federal bench. He no longer should hold the office entrusted to him over 20 years ago by the people through this body.

I will, therefore, vote guilty on the articles of impeachment against Judge Walter Nixon.

The PRESIDENT pro tempore. The majority leader.

Mr. MITCHELL. Mr. President, I move that the Senate, sitting as a court of impeachment of the articles of impeachment against Walter L. Nixon, Jr., adjourn sine die.

The PRESIDENT pro tempore. Without objection, it is so ordered, and the Senate, sitting as a court of impeachment on the articles against Walter L. Nixon, Jr., now adjourns sine die.

(Thereupon, at 11:29 a.m., the Senate, sitting as a court of impeachment, adjourned sine die.)

ORDER OF PROCEDURE

Mr. MITCHELL. Mr. President, if Senators will permit me to hold their attention for a brief moment, I will explain the schedule for the remainder of the day and on Monday. I would like to permit the managers to depart the Chamber and then we will be pleased to do that.

SCHEDULE

Mr. MITCHELL. Mr. President, there will be no further rollcall votes today. On Monday, the Senate will be in session. I intend to seek unanimous consent to proceed to the minimum wage legislation. If there is objection to that request, I will then move to proceed to the minimum wage legislation, so that we will be debating the minimum wage matter on Monday, either in the form of the bill itself or the motion to proceed.

It is also my hope that we will be able to take up the conference report on the transportation appropriations bill on Monday.

There will be no rollcall votes of those matters up on Monday, complete debate on them and then vote on them Tuesday morning. Senators should anticipate votes on Tuesday morning, either a vote on the minimum wage bill or on a motion to proceed to the minimum wage bill and hopefully and possibly to vote on the transportation appropriations conference report. Mr. President, I yield to the distinguished Republican leader.

The PRESIDING OFFICER (Mr. ROBB). The Republican leader.

Mr. DOLE. I hope we can get consent to go to the minimum wage bill. If not, I certainly join the distinguished majority leader in moving consideration of that bill. It is an agreement made by the President and the Congress. It is bipartisan. We ought to go ahead with it, get it done and move it down to the President of the United States. We will try to obtain consent. If not, I will cooperate in any way I can with the majority leader.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Mississippi [Mr. LOTT].

Mr. LOTT. Will the distinguished leader yield for a question with regard to the latter part of the week? There have been rumors and, in fact, there have been a couple of reports in the Roll Call newspaper, that we will not be in session on Friday, November 10 and some indication that we would not have votes on Monday, November 13. I realize that it is hard to project a week or 10 days in advance, but that is the Veterans Day weekend. For Members to make any plans whatsoever, it would be helpful if we can know if a decision has been made about November 10 and November 13.

Mr. MITCHELL. The Senate will not be in session on Friday, November 10. No decision has been made with re-

spect to Monday, November 13 because there is a great deal of uncertainty about the status of the budget reconciliation and a number of other items. I am hoping that we are going to be able to reach agreement soon in that regard and if agreement is reached and it appears we can proceed expeditiously, I will have an announcement early next week to make with respect to the 13th, hopefully adjournment sine die, and the schedule for the early months of next year.

Mr. LAUTENBERG. Will the majority leader yield?

Mr. MITCHELL. Yes, I will yield.

Mr. LAUTENBERG. I wonder if it is acceptable to the majority leader and the Republican leader to take up the transportation bill on Tuesday because there are some indications that people who want to speak to that will not be here on Monday. If that is not an inconvenience, I would appreciate that consideration. The majority leader and I have discussed this. This is not a surprise request.

I know he has a full agenda, as we all have. But as far as I know, there is little controversy about the DOT conference report and would, therefore, appreciate that consideration, if possible.

Mr. DOLE. If the Senator will yield, I have no objection to that. I point out, as the majority leader knows, we have one question on this that we are trying to resolve today. That is whether or not, since the drug provisions were stripped off the appropriations bill, whether they should be reoffered or whether we can work out some arrangement with the House. Second, I just say, as I indicated to the majority leader, hopefully we can reach some agreement on what we are going to do with the capital gains amendment. If not, we might offer that amendment to the conference report.

Mr. SYMMS. Will the majority leader yield?

The PRESIDING OFFICER. The Chair recognizes the Senator from Idaho.

Mr. SYMMS. I want to inquire of the two leaders to be sure what the understanding is with respect to going ahead on minimum wage; there is no time agreement and subject to any amendments starting on Monday if it is brought to the floor, but there will be no votes on those amendments until Tuesday, is that correct?

Mr. MITCHELL. That is correct. I did not plan anything beyond that.

Mr. SYMMS. I intend to have amendments to offer. I wanted to put the Senate on notice of that.

Mr. MITCHELL. I hope if that is the case, the Senator will be here Monday to offer them.

Mr. SYMMS. I will be here to offer them in relation to a rural health package, capital gains and others.

Mr. WILSON addressed the Chair.

The PRESIDING OFFICER. The Senator from California [Mr. WILSON].

Mr. WILSON. Mr. President, I direct a question to the two leaders. To the distinguished majority leader, I understand it is his intention to try to take up the conference report on the Department of Transportation appropriations bill?

Mr. MITCHELL. Yes.

Mr. WILSON. My understanding is the House stripped that bill of the drug provisions that were inserted by the Senate?

Mr. MITCHELL. The Speaker of the House, to my understanding, provided assurances that the House is going to act on those matters separately. Those assurances, I have been advised, have been accepted by the President, the administration and the House Republican leadership.

Mr. WILSON. If any of my friends can tell me, has the leadership in the House indicated what specific vehicle or when we might anticipate action on that drug package?

Mr. MITCHELL. I believe a letter has been written, but I have not seen the letter. So I should defer the answer until I actually see the letter.

Mr. WILSON. Let me make a request of my friend, if he can pursue that inquiry because I am sure I am not by any means the only one on the floor, and the Republican leader has evidenced his interest on behalf of our side. I think it would be very useful to many of us, as well as to the leadership in their efforts to schedule business, to have as much advanced warning on that if possible.

Mr. MITCHELL. That is what I tried to do by making the announcement today that we are going to try to do that on Monday.

Mr. WILSON. Perhaps I misunderstood. I am not talking about the appropriations itself. I am talking about the drug provisions that I understand will not be part of it.

Mr. MITCHELL. I will direct the staff to obtain a copy of the letter which I understand the Speaker has written and provide a copy to the Senator from California and any other interested Senator, and also attempt to elicit, if it is not included in the letter, some indication of the schedule that is planned in that regard.

Mr. WILSON. I thank the distinguished majority leader, and I yield the floor.

The PRESIDING OFFICER. Does any Senator seek recognition?

MORNING BUSINESS

Mr. MITCHELL. Mr. President, I ask unanimous consent that there now be a period for morning business not to extend beyond 12:30 p.m., with Senators permitted to speak therein for up to 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KERREY addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska [Mr. KERREY].

NEED FOR ACTION ON EDUCATION

Mr. KERREY. Mr. President, I rise today to talk again about America's schools.

Improving America's public primary and secondary schools is one of our country's greatest challenges. It is a challenge made more difficult by the distance between U.S. Senators and the classrooms of the 16,000 school districts. Quite simply, it is almost impossible for us to know what is happening.

It is almost impossible for us to feel the excitement in the moment a child makes the effort to discover something which had previously been inaccessible. It is almost impossible for us to feel the anguish when insurmountable barriers are placed in front of that child.

I do not rise to describe in great detail the conditions of America's schools. Suffice it to say they are inadequate. They could and need to be so much better than their current condition that I have reached the conclusion we need dramatic change.

The best challenge I have heard recently was made by President George Bush at the Education Summit in Charlottesville on September 28. He said:

> I do not counsel a naive nostalgia, some tame adherence to the past. Business as usual is not getting us where we need to go. So when hallowed tradition proves to be hollow convention, then we must shatter tradition. The polls show * * * [that] the American people are ready for radical reforms. We must not disappoint them.

Mr. President, we need to follow this strong challenge with action. Failure to do so will mean we are wasting the potential of our people. Failure to do so means we will be losing people: Students who are dropping out of school; students who do not drop out but whose full potential is not realized; and teachers who leave for better opportunities.

I regret to say, Mr. President, that since the wonderful words of Charlottesville, we have moved on to more current issues. Since those wonderful words there has been precious little action on the part of National leaders to shatter these traditions.

Secretary Cavazos has given a few speeches. He has conducted a much publicized and criticized trip to promote parental choice. There have been a couple of Rose Garden ceremonies. There were statements made by the administration which seemed to indicate President Bush was willing to let a sequester make significant cuts in

Federal aid to education. Gratefully, the President has since reversed himself.

In reality, what has happened in the 35 days since Charlottesville in this: 2,050 students have dropped out each day, that totals 71,770 since the conference room lights were shut off in Charlottesville; 350 teachers have left teaching each day, that totals 1,750 since the conference room lights were shut off in Charlottesville.

I believe we need a stronger Federal partner which joins with courageous and costly local efforts being made to shatter the status quo. We do not need a Federal partner which prescribes what will be done discouraging initiative and encouraging more bureaucratic waste.

I believe the best candidate for such a partnership may be one of America's worst school districts: Chicago. On October 11th and 12th the people of Chicago have moved to accept the President's challenge. Now, they deserve our help.

Under Chicago's radically new program, parents and neighbors have taken over the local schools. The 5,400 parents, neighbors and teachers who sit on these new decentralized school boards have embraced President Bush's challenge to shatter tradition. They realize that a crisis exists and they are willing to fully commit themselves to defining a new way.

The appeal of Chicago's plan lies in its joining of two important strands: community and parental involvement. In Chicago parents and neighborhood people have been given authority which has rarely been granted them before.

I understand that not everyone agrees with the thrust behind Chicago's plan.

Mr. President, I ask unanimous consent to print in the RECORD following my statement an editorial by Irving Kristol.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. KERREY. Mr. President, in this piece he warns against harboring a romanticism about education. He urges us to question accepted convention and understand where it has failed. So far so good. Then Mr. Kristol specifically discusses New York's effort to improve schools through greater parental and community involvement. In his view, the New York City decentralization experiment was a failure, and he then dismisses the notion of parental and community involvement entirely.

In my view, Mr. Kristol is wrong. Parental participation and community involvement are precisely what we need. I trust democracy. I believe it works. I am aware of its weaknesses or its occasionally raucus ways. I am aware of the potential for corruption and abuse.

However, I believe corruption and abuse are inversely proportional to the distance between the people and their government. I believe the short distance between Chicago's schools and the parents, neighbors and teachers and will decrease the occurrance of political abuse.

Mr. President, we sometimes learn the most from the least likely source. Such is the case with the words I read the other day of the Indian opposition leader, Mr. Singh: "I find that most of democracy's problems can be solved with more democracy."

The challenge we face in our schools is unprecedented, and we must have the courage and vision to challenge our prejudices, our preconceived ideas about what is the right answer, the right program. We need new direction.

On October 13, I proposed the establishment of an Educational Trust Corporation that would with an ability to make 20 to 30 year performance-based commitments to help local parents, neighborhood leaders and teachers can help nurture innovative reforms and improvements in our Nation's schools. It would help the citizens of Chicago and other cities across the Nation to take the necessary steps to address the shortcomings of our schools.

But we need to act quickly. The clock is ticking. Time is wasting. This crisis is worse than the one we faced with the loss of deposits from savings and loans. We are compromising our future. We are facing the loss of our future.

Education deserves more. America's business leaders have recently been speaking in a unified voice: Our educational system is threatening our economic well-being. America's CEO's are warning us that the differential between the skill requirements of new jobs and the skill level of our workforce is growing to threatening proportions.

Mr. President, today an important report is being delivered to our President by an esteemed group of industry and high-level government leaders. This national advisory committee on semiconductors will be making recommendations to President Bush regarding consumer electronics. This group has put together an innovative financing proposal.

Here is how it works: A privately managed for-profit investment company called the Consumer Electronics Capital Corp. would be created. Government loan guarantees would enable the corporation to borrow money at low interest rates and invest in new consumer electronic technologies and companies. This corporation would serve as a source for "low-cost, very patient capital," Semiconductor Committee Report, for companies wishing to enter the consumer electronics business.

The report on consumer electronics highlights a element critical to the development of an international competitive consumer electronics industry: The availability of "very patient capital." Such patience nurtures innovative thinking and experimentation. Mr. President, if we are going to boldly embrace President Bush's challenge to break with tradition and risk radical reforms in education we are going to need an attitude that does not expect overnight victory, but combines a bold, long-term strategy with patience. A critical element will be the availability of "very patient capital."

I believe that an Educational Trust Corp. with an ability to make 20 to 30 year performance-based commitments to help local parents, neighborhood leaders and teachers can help nurture innovative reforms and improvements in our Nation's schools.

We need a Federal partner that is more innovative and active. We need a Federal partner which encourages and activates our people to pursue greater democratic participation at the local level. We need to demonstrate confidence in our own abilities to learn from past shortcomings and create new solutions. More than anything, we need to follow our words with action.

EXHIBIT 1

[From The Wall Street Journal, Oct. 24, 1989]

EDUCATION REFORMS THAT DO AND DON'T WORK

(By Irving Kristol)

Why can't we teach our children to read, write and reckon? It's not that we don't know how to, because we do. It's that we don't want to. And the reason we don't want to is that effective education would require us to relinquish some cherished metaphysical beliefs about human nature of young people in particular, as well as to violate some cherished vested interests. These beliefs so dominate our educational establishment, our media, our politicians, and even our parents that it seems almost blasphemous to challenge them.

Here is an example. If I were to ask a sample of American parents, "Do you wish the elementary schools to encourage creativity in your children?" the near-unanimous answer would be, "Yes, of course." But what do we mean, specifically, by "creativity"? No one can say. In practice, it ends up being equated with a "self-expression" that encourages the youngsters' "self-esteem." The result is a generation of young people whose ignorance and intellectual incompetence is matched only by their good opinion of themselves.

A ROMANTIC REBELLION

The whole notion of "creativity" in education was (and is) part and parcel of a romantic rebellion against disciplined instruction, which was (and is) regarded as "authoritarian," a repression and frustration of the latent talents and the wonderful, if as yet undefined, potentialities inherent in the souls of all our children. It is not surprising

that parents find this romantic extravagance so attractive.

Fortunately, these same parents do want their children to get a decent education as traditionally understood, and they have enough common sense to know what that demands. Their commitment to "creativity" cannot survive adolescent illiteracy. American education's future will be determined by the degree to which we—all of us—allow this common sense to prevail over the illusions that we also share.

The education establishment will fight against common sense every inch of the way. The reasons are complex, but one simple reason ought not to be underestimated. "Progressive education" (as it was once called) is far more interesting and agreeable to teachers than is disciplined instruction.

It is nice for teachers to think they are engaged in "personality development" and even nicer to minimize those irksome tests with often disappointing results. It also provides teachers with a superior self-definition as a "profession," since they will have passed courses in educational psychology and educational philosophy. I myself took such courses in college, thinking I might end up a schoolteacher. They could all fairly be described as "pap" courses.

But it is unfair to dump on teachers, as distinct from the educational establishment. I know many schoolteachers and, on the whole, they are seriously committed to conscientious teaching. They may not be among the "best and brightest" of their generation—there are very few such people, by definition. But they need not be to do their jobs well. Yes, we all can remember one or two truly inspiring teachers from our school days. But our education proceeded at the hands of those others, who were merely competent and conscientious. In this sense, a teacher can be compared to one's family doctor. If he were brilliant, he probably would not be a family doctor in the first place. If he is competent and conscientious, he serves as well.

Our teachers are not an important factor in our educational crisis. Whether they are or are not underpaid is a problem of equity; it is not an educational problem. It is silly libel on our teachers to think they would educate our children better if only they got a few thousand dollars a year more. It is the kind of libel the teachers' unions don't mind spreading, for their own narrow purposes. It is also the kind of libel politicians find useful, since it helps them strike a friendly posture on behalf of an important constituency. But there is not one shred of evidence that, other things being equal, salary differentials result in educational differentials. If there were such evidence, you can be sure you would have heard of it.

If we wish to be serious about American education, we know exactly what to do—and, just as important, what not to do. There are many successful schools scattered throughout this nation, some of them in the poorest of ghettos, and they are all sending us the same message. Conversely, there are the majority of unsuccessful schools, and we know which efforts at educational reform are doomed beforehand. We really do know all we need to know, if only we could assimilate this knowledge into our thinking.

In this respect, it would be helpful if our political leaders were mute, rather than eloquently "concerned." They are inevitably inclined to echo the conventional pap, since this is the least controversial option that is open to them. Thus at the recent governors' conference on education, Gov. Bill Clinton of Arkansas announced that "this country needs a comprehensive child-development policy for children under five." A comprehensive development policy for governors over 30 would seem to be a more pressing need. What Gov. Clinton is advocating, in effect, is extending the educational system down to the pre-kindergarten years. Whether desirable or not, this is a child-care program, not an educational program. We know that very early exposure to schooling improves performance in the first grade, but afterward the difference is quickly washed away.

Let us sum up what we do know about education and about those education reforms that do work and don't work:

"Parental involvement" is a bad idea. Parents are too likely to blame schools for the educational limitations of their children. Parents should be involved with their children's education at home, not in school. They should see to it that their kids don't play truant; they should make certain that the children spend enough time doing homework; they should scrutinize the report card. If parents are dissatisfied with a school, they should have the option of switching to another.

"Community involvement" is an even worse idea. Here, the experience of New York City is decisive. Locally elected school boards, especially in our larger cities, become the prey of ambitious, generally corrupt, and invariably demagogic local politicians or would be politicians. New York is in the process of trying to disengage itself from a 20-year-old commitment to this system of school governance, even as Chicago and other cities are moving to institute it.

In most states, increasing expenditures on education, in our current circumstances, will probably make things worse, not better. The reason is simple: Education takes place in the classroom, where the influence of money is minimal.

Decades of educational research tell us unequivocally that even smaller classes have zero effect on the academic performance of the pupils—through they may sometimes be desirable for other reasons. The new money flows into the already top-heavy administrative structure, which busies itself piling more and more paper work on the teachers. There is neither mystery nor paradox in the fact that as educational expenditures (in real terms) have increased sharply in the past quarter-of-a-century—we now spend more per pupil than any other country in the world—educational performance has declined. That is the way the system works.

Students should move up the educational ladder as their academic potential allows. No student should be permitted to be graduated from elementary school with out having mastered the 3 R's at the level that prevailed 20 years ago. This means "tracking," whose main purpose is less to permit the gifted youngsters to flourish (though that is clearly desirable) than to ensure that the less gifted get the necessary grounding for further study or for entering the modern world of work. The notion that tracking is somehow "undemocratic" is absurd. The purpose of education is to encourage young men and women to realize their full academic potential. No one in his right mind actually believes that we all have an equal academic potential.

It is generally desirable to use older textbooks—many of them, alas, out of print—rather than newer ones. The latter are modish, trendy, often downright silly, and at best insubstantial. They are based on dubious psychological and sociological theories rather than on educational experience. One of the reasons American students do so poorly in math tests, as compared with British, French, German or Japanese students, is the influence of the "New Math" on American textbooks and teaching methods.

PRINCIPALS WITH AUTHORITY

Anyone who wants to appreciate just how bizarre this situation is—with students who can't add or subtract "learning" the conceptual basis of mathematical theory—should read the article by Caleb Nelson (himself a recent math major at Harvard) in the November American Spectator.

Most important of all, schools should have principals with a large measure of authority over the faculty, the curriculum, and all matters of student discipline. Study after study—the most recent from the Brookings Institution—tells us that the best schools are those that are free of outside interference and are governed by a powerful head. With that authority, of course, goes an unambiguous accountability. Schools that are structured in this way produce students with higher morale and superior academic performance. This is a fact—though, in view of all the feathers that are ruffled by this fact, it is not surprising that one hears so little about it.

RURAL HEALTH

Mr. SYMMS. Mr. President, today I think it is very important that we all recognize as we come close to the end of the legislative year, the first session of this Congress, something be done about the rural health package that we already passed through the Senate once. It was not a perfect package, but I think it is time that we set-aside our differences and take that package we have already passed and put it on either the minimum wage bill, on the debt ceiling bill, or any piece of legislation which the leadership thinks is the correct measure.

I invite Senators who are interested. I have my staff working today to prepare this package as a free standing matter. As I said, I am not completely satisfied with the package, but I do think it is important that the rural health package that has passed the Senate once this year, with bipartisan support in the Senate Finance Committee, through reconciliation, needs to be passed on some vehicle and needs to be done as soon as possible or all Senators will find they will have continued severe problems in rural America with respect to health assistance.

NICARAGUA

Mr. SYMMS. Mr. President, the November 1 article in the Washington Times by Pat Buchanan hit the nail on the head with regard to our policy, or lack thereof, in Nicaragua. As you know, President Bush has called Daniel Ortega the unwanted animal at the garden party, and I think what we have to ask is, what are we going to do

about it? What are we going to do about it? I do not impugn the motives of my colleagues. In fact, I voted for and supported the legislation that passed this week condemning Daniel Ortega, but I am reminded when I hear that of a quote from John F. Kennedy which in part says:

Above all, words alone are not enough * * * where our strengths and determination are clear, our words need merely to convey conviction * * * If we are weak, words will be of no help.

Mr. President, I think that is the best way to sum up where we stand. We lack the political will and strength to help the Nicaraguan freedom fighters.

Words are simply not enough. How much longer are we going to continue down this road of weakness and pacifism? Because in the end, it can only lead to our very destruction.

Once, our Government offered the Nicaraguan people hope, the real opportunity, and, real freedom. Today, we are offering them virtually nothing.

We are telling the Nicaraguans yearning for freedom and democracy to go it alone. We have given up. We have decided to forego the Reagan doctrine and have opted for the write-off doctrine.

I do not believe that is what the U.S. Senate, President Bush, or the House of Representatives really wants, even though the votes would indicate otherwise.

I believe without a doubt, our foreign policy should be unequivocal, overt support for liberation of enslaved people everywhere. That should be the policy of the United States of America. We should be working openly for the overthrow of the Communist regimes in Nicaragua and in Cuba.

Because, as Pat Buchanan's article states, "A Policy of Hope Is No Policy."

Mr. President, I commend this article to my colleagues, and I ask unanimous consent that it be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Washington Times, Nov. 1, 1989]

A POLICY OF HOPE IS NO POLICY

(By Patrick Buchanan)

You have to hand it to Daniel Ortega. The very day the leader of Nicaragua's junta told reporters he would end his country's 19-month cease-fire, he engineered a photograph of himself staring intently at the president. That photo, nestled beside the head-line about Nicaragua's new offensive, needed no caption: Danny Ortega had just taken the measure of President George Bush.

Contemptously ignoring the democratic leaders who had come to Costa Rica, Mr. Ortega, in army fatigues, announced his offensive to a group of students.

The stunned reaction of Secretary of State James A. Baker III: "It was a bit less than honest to sit in a meeting with the 16 and not tell them." Yes, wasn't it?

Said White House Press Secretary Marlin Fitzwater, "If it is true, it would be an incredible affront to the democratic principles that the Latin American countries are here to celebrate."

Deriding Mr. Ortega as "that little man," and an "unwanted animal at a garden party," Mr. Bush called Mr. Ortega's threat to break the cease-fire "a shameful blow to democracy."

Diplomatically, Mr. Ortega's threat backfired in his face; but how pathetic we look. Congress disarms the Contras in the name of peace, and, after a decent interval, Daniel Ortega decides to exterminate them in the name of peace. Teen-agers who volunteered to fight for their country, inspired by President Ronald Reagan, may yet learn the modern era's central lesson: While it is sometimes dangerous to be an enemy of the United States, to be a friend is fatal.

As all the tough talk on the Sunday shows only confirmed, south of the Rio Grande, the Colossus of the North is a pitiful, helpless giant.

Meanwhile, Mr. Baker moves through the bureaucracy, censoring speeches that suggest perestroika may not succeed.

You see, we have a vital interest in the success of the Soviet leader who sent the weapons the Sandinistas use to kill the kids we sent to fight. No wonder "America" has become an epithet to so many betrayed friends of freedom.

No, Mr. Bush is not responsible for selling out the Contra army. But, for nine months, he has conducted a courtship with the liberal Democrats who did sell them out; and it was Mr. Bush and Mr. Reagan who signed onto the Arias peace plan that may yet evolve into the Yalta of Central America.

U.S. policy in Nicaragua is now rooted in hope, the hope that Mr. Ortega will pull back from his threat to attack, the hope that he, who has broken every commitment he ever made to democracy, will honor his commitment to free and fair elections on Feb. 28, the hope that, if he loses, he will yield power.

But hope is a virtue, not a policy; and, as Teddy Roosevelt said: Where there is no force, diplomacy is utterly useless.

In mid-1987, we had "force" behind our policy to end communist rule in Nicaragua. After Ronald Reagan had extracted $100 million in military aid from a reluctant Congress, the Contras had the Sandinistas on the run. Between 15,000 and 20,000 rebels were inside Nicaragua, the largest guerrilla army Central America had ever seen. Mr. Ortega's men were desperate. Sensing that the Contras might win, Nicaraguans began standing up to the regime. Victory was two, three years away.

Then Congress rushed to the Sandinistas' rescue, cut off aid to the Contras, and prevailed on the president to collaborate with former House Speaker Jim Wright, and pursue peace through diplomacy alone.

With all the present focus on Central Europe, it is in these forgotten precincts of Central America that U.S. vital interests are disintegrating.

Mr. Bush should take a weekend off at Camp David to reflect there upon the intentions of the Soviet leader in whose success we are now said to have so large a stake.

Not since Woodrow Wilson arrived in Paris for the Versailles conference, to be hailed as the "Prince of Peace," has a world leader generated the excitement of Soviet President Mikhail Gorbachev. In West Europe, he is more popular than the president. In Leipzig, Dresden, East Berlin, hundreds of thousands chant, "Gorby, Gorby!" In Budapest, the day the nation declared itself a republic, and the hammer and sickle were torn out of the national flag, 100,000 chanted, "Gorby, Gorby!"

To the capitve peoples of Central Europe, Mikhail Gorbachev is the Czar Liberator, the man who will let them breathe free, the man who will hold back the tanks. But, if he is that man, then, Mr. Gorbachev is a traitor to the legacy of Lenin, a Marxist heretic who somehow managed to have himself elected Marxist pope.

Something is false here.

The same Mr. Gorbachev whose foreign minister calls the Afghan invasion illegal and immoral has sent his military advisers back to man SCUD rocket sites, and pilot MiG fighter-bombers.

The same Mr. Gorbachev who talks of denuclearizing the Baltic is modernizing, heavying up, his first-strike SS-18 ICBMs.

The same Mr. Gorbachev who cannot stop grinning at us presides over a propaganda apparatus that is still telling the vilest lies about the U.S.A.

The same Mr. Gorbachev who embraces glasnost fires editors, sends ultimatums to the Baltic states, and gathers dictatorial powers unseen since Stalin.

The same Mr. Gorbachev who wants to ease tension in Central America sent the military hardware for Mr. Ortega's new offensive.

Now, a man who takes you and the wife to dinner, picks up the tab, offers to stand everyone to a round of drinks at the country club later on—while his agents ransack your house—is not a friend. He is a clever, deceitful and dangerous adversary. And, before you toast his "success," be sure exactly what you are toasting.

Mr. SYMMS. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Chair recognizes the Senator from Nebraska [Mr. EXON].

THE GRAMM-RUDMAN SEQUESTER

Mr. EXON. Mr. President, my colleagues know that I have been one of the Senate's most strident opponents to the Gramm-Rudman law. I have repeatedly spoke and voted against this scheme of fiscal foolishness.

I believe that the Gramm-Rudman law is fatal in two key respects; first, it is a device which encourages the use of smoke, mirrors, and optimistic numbers to fake, rather than force serious action on the budget deficit, and second, the Gramm-Rudman sequester falls unfairly and unevenly across the budget.

I enthusiastically welcome the President's statement in support of a clean reconciliation bill to avert the effects of a sequester.

The President made the statement yesterday after earlier suggesting that he felt it would be best to leave the sequester in place. I am pleased that the President has changed his mind.

It is crucial that the reconciliation conference committee embrace the

President's challenge and work vigorously to find $14 billion in clean and honest savings. If the Congress and the President were to fail, the Nation will endure the two worst aspects of the Gramm-Rudman law. Namely, that the sequester will not have its promised effect because when finally calculated, at the end of the fiscal year the deficit will significantly exceed the $100 billion target in the neighborhood of $10 to $40 billion and that the modest total cut which is made by the sequester will be concentrated on a few select programs unfairly magnifying the pain of deficit reduction on those unfortunate programs.

Mr. President, the figures that I cite are for reference only. The Senate should be reminded that they are phony numbers under the Gramm-Rudman law that falsely portray the true deficit which is protected by those false numbers that are near $100 billion when in fact the correct figure is near the $300 billion figure. That is essentially true because of the misuse of the so-called trust fund and the manipulation that goes through the process in falsely reporting those.

Contrary to most descriptions of the sequester, it is not an across-the-board cut. Nearly 75 percent of Federal outlays are exempt from the Gramm-Rudman sequester ax. That means that those programs exposed to the sequester bear a heavy burden even under a modest sequester.

Agriculture is of key importance to Nebraska and some vocal supporters of the Gramm-Rudman law promised it would not hurt agriculture. At the time the law was considered, I predicted that it would seriously hurt agriculture somewhere down the line. Mr. President, I only wish that I had been proven wrong.

In the coming weeks, Nebraska farmers will see about a 5-percent reduction in most of their Federal farm checks. This comes at a time when farmers are just recovering from the ill effects of a difficult drought. In total dollars, the savings from sequester are somewhat similar to the savings from reconciliation, however, the impact is very different. Under reconciliation, reductions were targeted. Under sequester reductions are mindlessly applied by the President's computer.

To illustrate the effects of the Gramm-Rudman sequester, consider Mr. President, a 500-acre corn farm. Under the Senate reconciliation bill, deficiency payments would have been reduced by $1,090 from the payments generated by current law. Under the sequester that same farmer will lose $2,600. In other words, Sequester will take an additional $1,510 out of the pockets of that farmer.

On a 1,000-acre wheat farm, the sequester is also detrimental. Under the Senate reconciliation bill there would be a $664 reduction in deficiency payments. Under the sequester there will be a $1,133 reduction or an additional $469 out of the farmer's pocket.

These illustrations only describe the effect on deficiency payments. Under sequester virtually all agriculture checks are reduced. Sequester also effectively lowers the loan support level for all crops. The result is to indiscriminately cut farm prices and farm income. Where reconciliation represents a considered and targeted form of deficit reduction, sequester mindlessly and needlessly reeks havoc on all farm programs and especially hits Nebraska farmers right between the eyes.

To all those who said that the Gramm-Rudman law will not hurt agriculture, I ask them to take our their calculators and explain the sequester to Nebraska's wheat and corn farmers.

Mr. President, make no mistake about it, America's farmers recognize the need for deficit reduction and are willing to do their fair share. My point is that the Gramm-Rudman law takes an unfair share of pain out of farm programs.

In another key area, education, the Gramm-Rudman ax also cuts deep. The priorities which Congress agreed to only a few months ago will be abandoned and a $1 billion reduction will be implemented. The promises that Congress and the President made to education are turned upside down with the sequester. If left in place, the 2 percent of the budget which represents education bears 15 percent of the deficit reduction burden.

What is most tragic, for the pain unfairly leveled on a mere quarter of the budget, there will be little noticeable affect on the overall deficit. To paraphrase Winston Churchill, under a sequester, never have so few done so much for so little. This absurd circumstances only weakens public trust and support for meaningful budget action.

Mr. President, serious deficit reduction requires shared sacrifice from all Americans. It requires courage from leaders who will stand behind their votes rather than hide behind a computer.

Hobart Rowan, the respected financial columnist sees through this charade. He suggests that it is time that the Congress and the President "Let Their Conscience Be Their Guide" and abandon the Gramm-Rudman process. It is time that the Congress and the President examine their conscience and finally tell the truth to the American people about the serious need for austerity and deficit reduction. With small sacrifices from all Americans, such as the sacrifices requested by the freeze budget Senator HOLLINGS and I proposed earlier this year, our nation can go a lot further toward fiscal responsibility and fiscal sanity than under the Gramm-Rudman scheme.

I have faith in the American people. They will respond to fair action. it is time to close the curtain on this three act budget farce. The American people deserves better.

Mr. President, I ask unanimous consent the remarks by Hobart Rowan, respected columnist in the Washington Post, be printed in the RECORD; and also to be printed in the RECORD, the Washington Post article of Mr. James Rowe; and also my remarks on this subject of September 23, 1987; October 6, 1985; and December 11, 1985.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

LET CONSCIENCE BE THEIR GUIDE

(By Hobart Rowen)

Let's abolish the Gramm-Rudman-Hollings Act and force the president and Congress to go back to work, fulfilling their proper responsibilties to manage the federal budget.

This is not a radical proposal, merely a plea that the president and Congress do the jobs the Constitution assigned them. It would, among other things, require Bush to consider raising taxes, because Congress would have to grapple with the real deficit, not the phony one publicized by Gramm-Rudman, which all three authors of the bill admit is not working the way they anticipated. Then, the voters could judge how the president and members of Congress perform.

Increasingly, the public is aware that it is being flimflammed. The real dimension of the budget deficit next year is nearer $250 billion than the $116.2 billion projected by the White House Office of Management and Budget. Even within the artificial definition of deficit as used by Gramm-Rudman, the needed cut is more like $50 billion, Sen. Ernest "Fritz" Hollings (D-S.C.) told me, than the $16 billion set by OMB.

So citizens ask: "Who's in charge in Washington?" The answer: "No one."

Control, instead, is in the hands of the OMB computer that figures out what the federal deficit will be for the next fiscal year, using its own rosy scenario. That projection is compared with preset Gramm-Rudman "targets" for the deficit, manipulated to push embarrassments such as the costs of a multibillion-dollar savings and loan bailout borrowing "off-budget." If Congress can't meet the Gramm-Rudman target, an automatic cut is ordered in spending programs.

I tried out my idea that now is as good as any time to go back to basics—the real world of making policy through responsible leadership—in conversations with all three authors of the Gramm-Rudman legislation. Sen. Warren Rudman (R-N.H.), who had said at the outset five years ago that Gramm-Rudman "is a bad idea whose time has come," said, "It's maybe even a bit worse than I thought, but in its own odd, eccentric way, it's the only discipline we've got."

He credits Gramm-Rudman with cutting back the skyrocketing defense program and making it impossible for other spending to grow without offsetting cuts. "I understand your suggestion that 'conscience' once again be our guide, but there's a pent-up demand

for spending for all programs," Rudman said. Therefore, Rudman thinks, so long as Bush holds to his "read my lips, no new taxes" pledge, we're stuck with Gramm-Rudman.

Sen. Phil Gramm (R-Tex.) readily conceded that "the criticisms you hear of it are all valid, except when you compare what we have to the alternative. The analogy I like to use is that if you judge the success of religion by the number of saints we have, then religion is clearly a failure. But if you judge its success on the basis of whether we are better off with it or without it, then it is clearly a success.

"I never viewed [Gramm-Rudman] as a four-sided fort. All I ever saw it was as a stonewall to your back in a gunfight. It's proved helpful. Still, you can get hurt in a gunfight."

Hollings said he thinks there's no conceptual problem with Gramm-Rudman but there is with the politicians "who've been using it as a shield instead of a sword to cut the deficit." He's disgusted because Gramm-Rudman has turned into "a fraud" and "dishonest budgeting," but he, too, would hesitate to dump the whole system.

Yet, it's a system that forces some (not necessarily wise) budget cuts in the short term with every prospect that most of the real bad news will surface in the future. Some of the phoniness is evident right away. Once the "target" for the coming fiscal year has been set, Congress has even brushed expenditures backward into the old fiscal year: The real deficit is increased, but the Gramm-Rudman target has already been satisfied.

The sham is further illustrated by the key role of the White House budget office in making the official deficit projection. Wearing standard-issue rose-colored glasses, OMB Director Richard Darman now predicts next year's deficit at only $116.2 billion, or a mere $6.2 billion over the $110 billion Gramm-Rudman threshold triggering automatic cuts. But the Congressional Budget Office—regarded by most as more objective—puts the probable deficit next year at $141.5 billion, or $31.5 billion over the Gramm-Rudman trigger.

I don't buy Gramm's and Rudman's and Holling's arguments, which essentially boil down to the claim that Gramm-Rudman, for all its warts, is the lesser evil—that the nation is better off with Gramm-Rudman than without it. Gramm gives as an example that when the president proposed increased spending to curb drug abuse, Congress found the money by cutting other programs. And when the catastrophic health surtax was repealed, Congress also repealed the benefits. Before Gramm-Rudman, Gramm insists, "we would have repealed the surtax and kept the benefits."

But the drug financing is also an example of how slavish addition to Gramm-Rudman targets can drive policy the wrong way. The cuts Gramm lauds were all in programs designed to assist the poor: immigration aid to the states, economic development and a juvenile justice program. Intelligent legislators might make the connection between poverty and drug use; but Gramm-Rudman's automatic pilot cannot.

Senate Budget Committee Chairman Jim Sasser (D-Tenn.)—one senator ready to dump Gramm-Rudman—points out that it in fact acts to boost deficits in the long run. Placing the S&L bailout partially off-budget to meet Gramm-Rudman targets is one example. That will force taxpayers to spend millions of dollars in higher interest payments.

Gramm concedes that having the president and Congress go back, as I suggest, to running the government, is "much to be preferred." But he doesn't think that Bush and members of Congress can be trusted to do it.

"I've been here 11 years under three presidents and six congresses. I'm saying that the pressure to spend money and run deficits is strong and all-encompassing. Unless there is some binding restraint, pressure for spending ultimately dominates," Gramm says.

Instead of scrapping Gramm-Rudman, he intends to try to plug loopholes "to make cheating more difficult. But knowing the nature of Congress, I can believe that if you close loopholes, Congress will eventually find new ones."

Congress needs to be gutsier. Right now, it's hooked on Gramm-Rudman, which provides an easy fix. What the nation needs is a clean break. If Congress drops Gramm-Rudman, the ball will be in Bush's court. So far, Democratic leaders are waiting for a signal that he will give top priority to deficit reduction. It could be a long wait. Take the initiative, Democrats! Gramm-Rudman is broke. Don't try to fix it. Deep-six it!

SEQUESTRATION AX IS ALREADY BEGINNING TO FALL ON PERSONNEL AND SERVICES

(By James L. Rowe, Jr.)

When $16.1 billion in budget cuts automatically went into effect on Oct. 16, federal agencies and members of Congress assumed they would be lifted when new deficit reduction legislation was approved. This week, however, the White House has made clear its willingness to live with the cuts all year, which could mean:

About 1 million needy college students will not receive federal assistance for which they qualify.

The Defense Department may reduce the number of active duty troops by 170,000.

The State Department could trim about $70 million of $1.2 billion in aid intended for Israel.

The Environmental Protection Agency will chop about $107 million from grants to states to build sewage treatment plants.

These automatic, across-the-board spending cuts, called a sequestration, were required by the Gramm-Rudman-Hollings law because Congress and the White House failed to agree on ways to reduce the fiscal 1990 budget deficit to $110 billion.

The law exempts some spending from the automatic ax, most notably Social Security benefits and food stamps. A few other programs, such as Medicare payments to physicians and hospitals, can be cut by no more than 2 percent.

But except for those exempt and shielded areas, agencies must reduce spending for most programs by the same amount: 5.3 percent for non-defense programs and 4.3 percent for defense programs. If an agency wants to shift funds around—for example, taking a bigger hit on a capital spending program in order to preserve jobs—it needs congressional approval.

Because they never expected sequestration for fiscal 1990 to be permanent, most federal agencies cannot yet say precisely how the cuts will affect them. What follows is a preliminary look at the effect of the $16.1 billion in spending cuts.

Defense: The Pentagon will absorb about $8 billion of the cuts. Military officials said they are still in the midst of deciding where the reductions will be imposed. To cut outlays in 1990 by $8 billion they might have to cut budget authority—commitments to spend this and in future years—by up to $15 billion.

Officials estimated that the Defense Department might have to cut more than 170,000 active duty troops to reach a $3.4 billion reduction in the personnel budget.

The operations budget would have to be trimmed $3.8 billion. Operations cutbacks could range from reduced flying hours for airplanes and steaming hours for ships to pared back maintenance operations and training programs. Procurement cutbacks totalling $3.6 billion might have to be authorized, a move leading to slower production schedules for weapons and equipment and smaller-sized purchases.

The Pentagon said it would have to trim $1.7 billion from its research and development budget, forcing renegotiation of major contracts and delays in such areas as the testing in development of the B-2 "stealth" bomber and the SSN-21 attack submarine.

Other areas that could be affected include military construction, from barracks to child-care centers.

Education: Budget authority for Pell grants to needy college students would be reduced to $4.4 billion, about $250 million less than the budget law baseline, but $1 billion less than the Education Department thinks is necessary. About 1 million students would not receive grants and 500,000 would get less than they needed. Federal subsidies to guaranteed student loans would be reduced.

Agriculture: The major nutrition programs, such as food stamps and the women, infants and children's (WIC) program, would not be affected. But agricultural support programs would be cut by more than $800 million, affecting millions of farmers producing most major crops and milk. Dennis Kaplan, chief of the Agriculture Department's office of budget and program analysis, said eventually the department might have to furlough food inspectors, leading to slowdowns in production lines at meat and poultry plants.

Health and Human Services: There will be no cuts in benefits under Social Security, aid to families with dependent children, Medicaid or Supplemental Security Income for the aged, blind and disabled. There is a 2 percent limit on cuts in Medicare payments as well as programs for foster care and adoption aid, community and migrant health centers and Indian health centers.

But administrative expenses in many programs might be affected, including a reduction of about 3,300 jobs in the Social Security Administration. Administrator Gwendolyn King has ordered a hiring freeze, restrictions on overtime and travel and no purchases of new computer equipment. The agency estimates that Medicare claims will take, on average, an additional 1.9 days to be processed.

Health research will be reduced. Last year 22,772 research projects were supported. In fiscal 1990 the number will be reduced to 21,798. The Office of Management and Budget estimated that spending on AIDS research, slated to grow 24 percent, will decline 5 percent.

Funds for Head Start for low-income children would be cut $70 million. Head Start was supposed to add 95,000 children to its program this year. Instead, only 16,750 more children will be accommodated. About 300,000 fewer children will be immunized against measles, mumps, rubella or polio.

Environment. Richard Brozen, the EPA acting budget director, said the biggest cuts

will be a $107 million reduction in grants to states building sewage treatment plants and an $80 million reduction in "Superfund" spending to clean up toxic waste dump sites and land polluted by underground tanks containing oil.

Commerce. The department conducts its once-a-decade census of the U.S. population in fiscal 1990. An official said that the Census Bureau, which has already faced budget cuts, could not "do an accurate census" if the sequestration remains in force. He said that the agency has not figured out exactly how most of its other programs would be affected, but said the effort to modernize weather forecasting would be set back and some weather stations might have to be closed.

Science. The National Science Foundation, which is the leading agency for funding basic nonmedical, non-military research, would make 700 fewer grants, affecting about 2,000 scientists and saving about $90 million, according to Joel Widder, head of congressional affairs at NSF. The agency had planned to make about 14,000 grants this year, he said. NSF's total budget is $2.1 billion.

Officials estimate the Internal Revenue Service would lose about 4,700 employees, reducing the number of audits and taxpayer assistance telephone calls. The Interior Department said areas from trail maintenance at parks to wildlife surveys would suffer.

Every other agency will have to cut back, including the White House and Congress. In many cases they are only beginning to look at how this would be done.

[From the Congressional Record, Sept. 23, 1987]

Mr. EXON. Mr. President, I have the greatest respect for the authors of the proposition before us and I applaud their efforts for reaching a compromise under some most extreme conditions. They have worked hard and it might be argued that this is the best than can be done under the circumstances. I do not slight the intentions of the authors, I simply disagree with the underlying premise of the Gramm-Rudman philosophy.

I fully share the authors' concerns regarding the growing Federal budget deficit. I have authored a constitutional amendment to require that the President submit and the Congress enact a balanced budget and legislation to reform debt ceiling approval. In my view, if the debt ceiling is to be increased, it should accompany actual deficit reduction and be tied directly to the Federal budget. I am also a cosponsor of legislation to give the President enhanced rescission authority which would allow the President to immediately send items contained in appropriations bills back to Congress for reconsideration. I have also long supported legislation to grant the President line-item veto authority.

Mr. President, I realize that all the process reform in the world alone will not solve the deficit crisis. There are only three ways to reduce the deficit; cut spending, improve receipts or pursue a combination of both. The real problem is not procedure, it is people. The deficit crisis will not be solved until the congressional leadership and the President sit down and work out a program of shared sacrifice. As a former Governor who put together eight balanced budgets, I can attest to the fact that there are no procedural magic wands, or painless ways to cut spending. Only hard work, tough negotiation, and good faith efforts to reach a consensus can produce meaningful deficit reduction.

I have been a consistent opponent of the Gramm-Rudman law. In spite of several positive factors, much of the Gramm-Rudman scheme is poor public policy. I have opposed the Gramm-Rudman law over the years because it is an abdication of congressional responsibility; it delays meaningful action on the deficit; the result it produces is grossly unfair; and after 2 years of operation it has not worked.

In this bicentennial year, the Gramm-Rudman automatic sequester is an idea which goes against the very foundations of congressional power and responsibility. The Constitution of the United States grants the Congress the power to lay and collect taxes, pay debts and provide for the national defense. Gramm-Rudman turns congressional responsibility over to the President's Office of Management and Budget. If the economic forecasters determine that the Congress has not reduced the deficit by a sufficient amount, the authority to cut a portion of the Federal budget is turned over to the head of the Office of Management and Budget. I do not believe that the American people elected the Congress to turn over its constitutional fiscal responsibilities to an unelected bureaucrat.

The entire Gramm-Rudman process actually delays serious action on the deficit. The budget reconciliation bill passed in 1986 is a prime example of the type of deficit reduction the Gramm-Rudman process inspires. The bill was loaded with spending shifts, one-time asset sales and accounting gimmicks which reduced the deficit projections, which technically met the Gramm-Rudman targets for the purposes of avoiding a sequester. The Congress did very little to reduce Federal borrowing or reduce the structural deficit. Rather than force action, the Gramm-Rudman process fakes action. I will concede that the latest incarnation of the Gramm-Rudman amendment goes a very long way to close the many known loop holes. However, in this environment, it is only a matter of time before new loopholes are discovered. One obvious weakness in this new incarnation is that it will likely encourage appropriators to "pad" accounts to cushion the effects of a sequester.

Most disturbing is the fact that if the Gramm-Rudman procedure were played out, it would produce a result which is grossly unfair. In its basic and theoretical form, there is great appeal to taking across-the-board action to reduce the deficit. I have worked over the years to formulate across-the-board freeze budgets. If the Congress is unable to reduce the deficit, it makes a good deal of sense to freeze or reduce each program by a uniform amount to deal with a budget shortfall. Such a procedure spreads the burden of deficit reduction and preserves the relative priority of each program. Unfortunately, Gramm-Rudman is not across-the-board deficit reduction. Over half of all Federal spending is exempt from the Gramm-Rudman formula reduction. Those nonexempt programs must absorb a disproportionate share of the deficit reduction burden. Agriculture, for example, takes an extremely heavy hit in a sequester scenario. Agriculture which accounts for about 3 percent of the budget would take a 10-percent reduction even under the limited sequester established for 1988. No one can say that Gramm-Rudman does not hurt farmers.

After 2 years of operation, by and large, Gramm-Rudman has not worked. The new version of the law does not bring with it a new promise of deficit reduction. If anything, it pushes difficult decisions away from this Congress and President Reagan onto the next Congress and the next President. In the first year of the Gramm-Rudman law's operation, the United States rolled up a $220 billion deficit; the largest ever! The Congressional Budget Office [CBO] just reported that in 1987 the deficit will likely exceed $160 billion, about $20 billion above the current Gramm-Rudman target. However, the acting director of CBO acknowledged that this slight improvement in the deficit picture is largely temporary and due to an unexpected windfall from tax reform, spending shifts, and one-time asset sales. After 1987, the deficit once again takes an upward path and hovers indefinitely in the $200 billion area. Today, the Congress is attempting to put off dealing with the long-term problems of debt and deficit.

Let's be honest with the American people. There were not sufficient votes to increase the debt ceiling, 2 years ago, to over $2 trillion and today to $2.8 trillion. The original Gramm-Rudman law and today's latest incarnation is basically a device to garner sufficient votes to extend the debt ceiling to a new and extraordinary level.

Mr. President, the Gramm-Rudman philosophy works to reduce deficit estimates, but time has proved it is a meager tool for actually reducing deficits. It is a way for Congress to congratulate itself for having fiscal courage without making a single decision on the spending and revenue issues which produce the debt and deficit. The future of deficit reduction does not hinge on the adoption of an automatic trigger for the Gramm-Rudman law. It hinges on political will and bipartisan cooperation. From the first day of Budget Committee hearings, the members of the majority called on the President to meet with the congressional leadership in a budget summit to really fix this problem. To date those requests have fallen on deaf ears. If the President can negotiate with the Soviets, certainly he can negotiate with the Congress.

The debt and deficit are the nuclear nightmare of the President's fiscal policy. It is time to stop hiding and start working toward deficit disarmament.

Thank you, Mr. President.

FLOOR STATEMENT BY SENATOR J. JAMES EXON, OCTOBER 6, 1985

Mr. President, there are few in this body who have had as much experience at Government balanced budgets as this Senator.

As a fiscal conservative of long standing and one who has offered and supported many well thought-out and necessary proposals to directly attack the most pressing economic problems of our country, one might presume I would fall in line with the proposal before us. It appears politically astute to do so at this tense moment. We are being maneuvered and herded unnecessarily to "ride the last train" out of the station headed toward the magical ride to Oz and the land of fiscal responsibility.

Be that as it may, I do not choose to ride because from what I understand of this hastily designed and advanced proposal, it may have serious flaws that will adversely affect the interests of the people of my State and my country. With some corrections I might board, but I question the stampede action that is being whipped up, and will not be a party to this measure as it stands. Cloture would all but eliminate possible constructive changes. After all, I

remind the Senate, this is supposed to be the most deliberative body in the world. Is it, under these conditions? I think not.

There is no legitimate reason for this highly unusual Sunday cloture session. It should be clear to all that we have been "over-coached" into this predicament by design. It's part of the "game plan." Not many successful coaches use a strategy that concentrates on a "Hail Mary" pass for sure victory.

It should also be clear to all that the debt ceiling measure was called up, complete with the principal "shifting sand" amendment conveniently timed and attached, as late as possible. It was all orchestrated well. On Wednesday the President called for a "clean" $2 trillion debt ceiling free of all amendments. On Friday, following a well publicized White House press conference, the game plan was reversed with a White House enthusiastic endorsement of the principal amendment that is being peddled on the floor as balancing the budget by not touching Social Security C.O.L.A.'s, ever or never, avoiding any hint of increased revenues even in the form of a minimum income tax on wealthy corporations, and with the President's specific assurances that notwithstanding anything else there would be no relenting on his defense build-up. Who is kidding whom and for what reason?

The only possible reason I can discover for all of this is to get through the President's request to bust through the $2 trillion debt ceiling limit by sugar-coating the bitter pill with a less than meaningful deficit reduction package.

I view the measure before us as a hastily and ill thought-out proposal and an exercise in "crisis management." It holds out a panacea when, in fact, it is political fantasy that delays rather than expedites meaningful action on the calamity of debt and deficits that face us.

If we are in serious financial difficulty, why not face the music now, rather than conveniently "putting it off" which this measure does in a devious fashion until after the 1986 elections?

There is no good answer to that question, and I urge my colleagues to think twice and oppose cloture.

[From the Congressional Record, Dec. 11, 1985]

Mr. EXON. Mr. President, I have been listening with keen interest to the versions of the basic bill before us by several of my colleagues, and I was somewhat encouraged at times by some of the comments that I heard. I anticipated that after the considerable recitations by several of my colleagues for reasons to oppose Gramm-Rudman that they had changed their mind but in the end I found that with hesitation they were supporting it.

There are no surprises in the speech that I am about to deliver. I am against Gramm-Rudman. I have been against it from the beginning and I remain opposed. So there will be no surprises. While I hope, like the rest, I think we have to have some reality along with hope.

Mr. President, the record of this Senator is clear as a determined fighter for fiscal sanity and against mushrooming deficits. Notwithstanding that, I cannot, in good conscience, buy a "pig in a poke."

This is the day of "The Great Escape." The headlines tomorrow will likely lead Americans to falsely believe a historic action, a happening, has magically taken place in Washington. Not 1 in 10 Americans now understand that this Gramm-Rudman fiasco is a carefully and clandestinely designed cover for busting through the $2 trillion debt ceiling limit. Mind you, Mr. President, that since 1981 this Nation has plunged into the depths of never-before-imagined deficit spending. We have doubled our national debt in 4 years. This administration, widely and falsely perceived as fiscally conservative, has created more debt than all the previous administrations combined.

When President Reagan assumed office with an explicit promise to balance the budget by 1984, every man, woman, and child in the United States owed as their per capita share of the then just under $1 trillion amassed debt, $5,000. Today, that figure has doubled to $10,000 each with the $2 trillion debt. Mr. President, my six grandchildren, plus two more on the way, object. They simply cannot afford it.

We have been sold a bill of goods with the so-called laughable curve, sometimes known as the laffer curve, and growing our way out of the deficit. We now recognize it as nonsense. We languish in the incredible belief that those who got us into this mess have the knowledge to get us out. "The day of the great escape" is here and it is December 11, 1985. They have concocted an escape from the political penalty of their actions by cleverly concealing their vote to bust through the historic $2 trillion debt ceiling by covering their tracks with an unworkable concoction known as Gramm-Rudman. This purports to balance the budget in the future in what I view as an unworkable straightjacket.

Mr. President, this is another December and it may be another day in infamy. The first was by a foreign power. This December we are doing it to ourselves. This is a day in infamy when the Senate, the supposedly most deliberative body in the world, is about ready to shoot itself not in the foot, but in the head.

No one can say this is not a hastily designed piece of legislation devoid of customary committee consideration, hearings, and approval. The only record established is that we have a problem in not having enough votes to pass President Reagan's request for a further increase in the debt ceiling to over $2 trillion. This concoction is a political way out of a political problem and as such is so suspect on its face as to not deserve consideration. Possible constitutional questions are brushed aside.

In another sense, Mr. President, this is "The Day of the Condor" in the Senate. This measure will surely set loose the vultures to plunder the basic readiness of our national security structure, while simultaneously launching the most expensive national defense system in history, the multibillion dollar SDI Program, on top of firm promises to not interrupt other multibillion dollar additions to other complicated and expensive defense initiatives, we can be assured the vultures will prey on readiness. They always have and they always will.

Since over half the budget, to satisfy basic constituencies, has essentially been exempted from meaningful cuts to reach the "pot of gold at the end of the 1991 rainbow," other programs including agriculture which is now in a desperate economic straightjacket, will have to be devastated. This mentions only one domestic program, and as we all know, there are many others.

What do we do? We act responsibly by defeating Gramm-Rudman on this day of days in the U.S. Senate. We return to our senses, pass a temporary debt extension, and return this ill-conceived legislation to a responsible committee for major overhaul, if not total rebuilding.

Mr. President, my grandchildren and I are concerned and want considered action, but not destruction. I will vote no and encourage my colleagues to do likewise and not get caught up in this pretext for progress on the deficit. Mr. President, I urge thought and not thoughtlessness. Let us not sell America short for the expendiency of covering up the vote on the $2 trillion debt ceiling increase. It will all come out sometime, although it is the best current kept secret in Washington and in the land.

Mr. EXON. Mr. President, I yield the floor.

The PRESIDING OFFICER. Who wishes to be recognized?

Mr. HATFIELD addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Oregon [Mr. HATFIELD].

FORCIBLE REPATRIATION OF VIETNAM REFUGEES

Mr. HATFIELD. I would like to take a few moments of the Senate's time today to comment and to warn my colleagues of an impending tragedy in Southeast Asia. Some 40,000 Vietnamese boat people currently are warehoused in squalid refugee camps in Hong Kong, and they face the imminent prospect of forcible repatriation back to Vietnam.

Mr. President, Prime Minister Margaret Thatcher and other high-ranking British officials have made the position of the British Government quite clear. Unless these Vietnamese refugees return to Vietnam voluntarily, they will, in the near future, be returned involuntarily; in other words, forced repatriation.

The enmity Hong Kong citizens have for the Vietnamese is no secret, and Hong Kong officials have tried just about everything to deter the arrival of the Vietnamese boat people. Those not deterred by a highly arbitrary and unfair refugee screening program, instituted in June 1988, are forced to live in appalling conditions. In fact, beginning earlier this year, refugees were forced to live on a remote island with no shelter, no electricity, no running water or sanitary facilities, until a cholera outbreak required evaluation. Only a tiny number of refugees live in open camps with the right to move freely and the right to work in Hong Kong. Despite these conditions, freedom is a strong magnet. Thousands of refugees continue to seek asylum in Hong Kong.

We are now faced with the forcible return of helpless asylum-seekers back to one of the most repressive nations in the world. The refugees have made clear their opposition to returning and have threatened violence and suicide. Their attitude is understandable.

The British, however, claim that boat people are merely "economic immigrants," and, as such, are deportable as illegal aliens. Some may be, but determination of their status under the flawed Hong Kong screening policy is wholly unreliable. The evidence is that the vast majority of the boat people are true refugees.

Mr. President, we all should be outraged that forced repatriation of Vietnamese asylum-seekers is even being considered. Imagine, if Soviet or East German refugees were forcibly returned, Western nations would rise up in opposition. It appears, however, that the United States is virtually alone in opposing the forcible repatriation of Vietnamese refugees.

I am very grateful to President Bush, to Secretary Baker, to Deputy Secretary Eagleburger, and others in the administration, for their strong position against forced repatriation. I also urge them to hold the line and encourage my colleagues to do likewise.

Mr. President, the Senate recently voiced its opposition to forced repatriation of asylum-seekers back to Vietnam in a resolution that I sponsored, Senate Concurrent Resolution 26. It is time for the Members of this body to speak out again, and the only way repatriation can occur and should occur is when it is truly voluntary.

As stated in Senate Concurrent Resolution 26, "No repatriation of Vietnamese asylum-seekers should occur until a strong and effective internationally-approved mechanism is in place to guarantee that such asylum-seekers will be returned in conditions of safety and dignity and will not be subjected to persecution in any form." The British are proceeding bilaterally and have yet to assure the international community that such a mechanism is or even will be in place.

In order to promote truly voluntarily repatriation, I support and concur in the recommendations of the Indochina Resource Action Center. They have said in effect that there should be certain conditions, and those conditions are: One, ensure that Vietnam guarantees to returnees safety, dignity, reintegration assistance, return of property and freedom from persecution, prosecution or discrimination; two, to establish an effective monitoring system with full and confidential access to returnees by the United Nations High Commissioner for Refugees and cooperating nongovernmental organizations; three, prevent the use of coercive measures to induce voluntary repatriation; and, four, create humane conditions in all camps to ease eventual reintegration into their society; five, establish conditions to guarantee conditions of safety of volunteers waiting to return; six, institute a wide-reaching education campaign on voluntary repatriation.

Mr. President, only if these conditions for truly voluntary repatriation are met, can we sanction any return of the Vietnamese to Vietnam. Human decency demands no less. There are those who find the plight of these refugees unfortunate, but irrelevant. Because they do not have names and faces and families which are familiar to us, because television cameras are not in the camps bringing the refugees into our living rooms every night, the temptation is to forget that they even exist, but they do exist.

The commandment says to "do unto others as you would have them do unto you" seems terribly outdated in this age of selfish materialism, but it raises the question: If it were us instead of them, would anyone care?

I call upon my colleagues to insist upon such conditions and to speak out against any British plans for forcible repatriation. Asylum-seekers from Vietnam have risked everything they have, particularly their lives, in an effort to find freedom. It would be unconscionable if those nations which cherish freedom turned on them in their greatest hour of need and forgot them.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. Mr. President, do I still have leader time?

The PRESIDING OFFICER. The Senator has all of his leader time remaining.

GENOCIDE, ARMENIA AND ISRAEL

Mr. DOLE. Mr. President, last month, the Judiciary Committee favorably reported out Senate Joint Resolution 212—the joint resolution I introduced to remember the victims of the Armenian genocide.

That action was taken in the face of one of the most extraordinary lobbying campaigns against the resolution that I have ever seen. Of course, I have no quarrel about any American's right to lobby for or against any piece of legislation. But I have been concerned about two aspects of the lobbying campaign.

One matter that troubled me were reports, which I think every Senator was aware of, that a foreign embassy—the Embassy of Israel—engaged in active lobbying against the joint resolution. In my view, any such activity would be highly inappropriate, at the least; and might well be illegal.

I wrote to the Israeli Ambassador on this matter. In his reply, the Ambassador assured my that "no member of the embassy staff has approached any Jewish organization asking them to act against Senate Joint Resolution 212." I ask unanimous consent that my letter to the Ambassador, and his reply, be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

OFFICE OF THE REPUBLICAN LEADER,
Washington, DC, October 23, 1989.

His Excellency, MOSHE ARAD,
Ambassador of Israel,
Embassy of Israel, Washington, DC.

DEAR MR. AMBASSADOR: I have recently learned of press reports quoting a member of the Israeli parliament as saying that your Embassy encouraged members of the American Jewish community to work against Congressional passage of Senate Joint Resolution 212—legislation I recently introduced to mark April 24, 1990, as a Day of Remembrance for victims of the Armenian Genocide of 1915-23.

I would appreciate it if you could advise me as to whether such reports are correct or, more broadly, whether your Embassy—or any of your officers or staff—have taken any action of any kind, authorized or unauthorized, relevant to this legislation or its consideration by the Congress.

Sincerely yours,

BOB DOLE,
U.S. Senate.

EMBASSY OF ISRAEL,
Washington, DC, October 25, 1989.

Hon. BOB DOLE,
U.S. Senate, Washington, DC.

DEAR SENATOR DOLE: I acknowledge with thanks your letter of October 23 which I hasten to reply to.

As victims of Genocide and Holocaust, no other people in mankind's history can identify with the Armenian plight and suffering more than the Jewish People.

As for your inquiry I can assure you that no member of the Embassy staff has approached any Jewish organization asking them to act against Senate Joint Resolution 212. I am aware, however, as I assume you are, that in early October a meeting took place in New York between the Foreign Minister of Turkey and a group of Jewish Leaders. In that meeting an approach was made concerning the above mentioned legislation.

As you know, Turkey is the only non-Arab Moslem country in the world to maintain diplomatic relations with Israel. It is therefore only natural that issues concerning Turkey are the subject of our attention and we followed with interest the proceedings concerning Senate Joint Resolution 212.

Mr. DOLE. Subsequent to receipt of the Ambassador's reply, I learned of an article in the Jerusalem Post, quoting Israeli Foreign Ministry officials as saying, in effect, that the Israeli Embassy here had indeed been lobbying against the resolution; and that the Ministry had issued instructions to the Embassy to cease its lobbying activities.

I ask unanimous consent that the full text of the Jerusalem Post article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Jerusalem Post, Oct. 24, 1989]

EMBASSY WENT TOO FAR IN ARMENIAN AFFAIR

(By Menachem Shaley)

Officials at the Israeli Embassy in Washington went beyond their brief in lobbying against a State resolution commemorating the Turkish genocide of Armenians. Foreign Ministry officials charged yesterday.

The officials said that certain top officials at the embassy had been "overzealous" on the matter and had embroiled Jerusalem in an embarrassing affair.

The officials added that, in response to a request by Turkey, the embassy had been instructed only to "make inquiries" about the proposed Senate resolution, which would declare April 24, 1990 as a day commemorating the Armenian genocide. The officials said that they were "astounded" to learn that the embassy had engaged in active lobbying against the resolution, in consultation with several American Jewish organizations.

The Foreign Ministry this week instructed the embassy to cease its lobbying activities. The ministry spokesman said yesterday that "Israeli delegations will not intervene in questions related to this matter."

The spokesman said: "Israel, as the state of the Jewish people, who suffered more persecution and oppression than any other people, is very sensitive to the sufferings of the Armenian people."

Prime Minister Yitzhak Shamir said yesterday Israel was not seeking to block the controversial resolution.

"The Israeli government does not deal with this," Shamir told reporters when asked if the ambassador to Washington was trying to block the resolution. "It is not our business." He was speaking after briefing the Knesset's Foreign Affairs and Defence Committee yesterday.

Mr. DOLE. Because of that article, I have sent a second letter to the Israeli Ambassador, asking for further assurances and clarifications regarding the Embassy's actions on Senate Joint Resolution 212. I ask unanimous consent that the text of that letter, too, be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

OFFICE OF THE REPUBLICAN LEADER,
Washington, DC, November 2, 1989.

His Excellency Moshe Arad,
Ambassador of Israel,
Embassy of Israel,
Washington, DC.

Dear Mr. Ambassador: Thank you for your letter of October 25, responding to my inquiry about Embassy activity related to Senate Joint Resolution 212—the Armenian genocide legislation that I have introduced. I appreciate the assurances it contains. I do have several additional questions.

Your letter states that "no member of the Embassy staff has approached any Jewish organization asking them to act against Senate Joint Resolution 212." Can you assure me, categorically, that no one with any official position at the Embassy—officer, staff, or otherwise—approach any American group or individual and offered any views on (as opposed to merely inquiring about the status of) the Resolution in question?

The enclosed article from the Jerusalem Post cites Israeli Foreign Ministry sources as saying that "certain top officials" of your Embassy had been "overzealous" in following Ministry instruction, to inquire about the status of the legislation, and that Ministry officials were " 'astounded' to learn that the Embassy had engaged in active lobbying against the resolution * * * [and] this week instructed the Embassy to cease its lobbying activities." Is the Jerusalem Post article in any of its essential elements? Has the Embassy been instructed by the Ministry to cease lobbying activities on this legislation? If no such lobbying activities took place, why did the Ministry issue any such instructions.

I look forward to hearing from you on these matters at your earliest convenience.

Sincerely yours,

BOB DOLE,
U.S. Senate.

Mr. DOLE. I look forward to hearing further from the Ambassador—hopefully, with a categorical assurance that the Jerusalem Post article is dead wrong, and that no one associated with the Embassy engaged in any inappropriate activity.

The other matter that bothered me, in a different way, was the obvious lobbying effort which some Jewish Americans and groups undertook against Senate Joint Resolution 212.

Again, I have no quarrel with the right of any American to lobby for or against any piece of legislation. But I am disappointed that members of the Jewish community—who have suffered such unspeakable horrors because of the Nazi genocide—should fail to be sensitive to the similar feelings which affect the Armenian-American community.

I do want to note that many, many Jewish Americans—and Jews elsewhere—have spoken out in sympathy with the Armenian community. I ask unanimous consent to have printed in the RECORD the text of items from three different papers—the Los Angeles Times, the Long Island Jewish World, and the Jerusalem Post.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the Los Angeles Times, Oct. 30, 1989]

ISRAEL DEMEANS ITSELF IN AN AFFRONT TO ARMENIANS

(By Gershom Gorenberg)

JERUSALEM.—At first glance, the article in the Tel Aviv daily looked like a bad mistake. "Despite Jewish protests," it said, a U.S. Senate committee had approved a resolution to declare a memorial day for Armenian victims of mass murder.

Israeli diplomats and American Jewish lobbyists, the article said, had opposed Senate Judiciary Committee approval of the resolution, which would declare next April 24 a memorial day for up to 1½ million Armenians killed by Turks in the last days of the Ottoman Empire.

Jews usually are outraged by attempts to cover up genocide. So when I saw that item, I assumed it was the kind of foul-up that newspeople have nightmares about. I figured that the reporter in Washington phoned in the story, and the poor slob taking dictation heard a burst of static as "oppose" instead of "support," and now a whole crew of journalists was looking for a place to hide.

But similar reports kept coming. Along with the Bush Administration, Israeli diplomats were asking senators to forget the massacre, so that a minor matter of genocide wouldn't upset relations with Turkey.

Now Israel's Foreign Ministry is looking for cover. The ministry spokesman says that Israel "is very sensitive to the sufferings of the Armenian people." Unnamed officials are quoted as saying that Israeli diplomats in Washington were "overzealous." They were only supposed to "make inquires" about the Senate resolution. Apparently we're to believe that diplomats, not journalists, were the victims of bad phone lines. A guy here must have said, "Find out about this Armenia thing," and someone in Washington heard, "Fight hard against this Armenia thing."

If that's the excuse, it isn't good enough.

This isn't the first time the Foreign Ministry has tried to help Turkey deny its past. In June, 1982, the Jerusalem Post reported that the ministry had made "persistent and comprehensive efforts" to block the holding of the International Conference on the Holocaust and Genocide in Tel Aviv. The ministry objected to workshops on the murder of the Armenians; Turkey would be upset, and ties with Ankara might suffer.

In 1985, the ministry reportedly tried to talk Jerusalem Mayor Teddy Kollek out of taking part in a memorial meeting by Armenians here. According to the daily Haaretz, Foreign Ministry officials were quick to claim a payoff for lobbying against the Senate resolution: Turkey voted against a move to reject Israel's credentials in the United Nations.

Even now, ministry officials admit that the envoys in Washington were instructed to "make inquiries" about the resolution in response to a Turkish request. If the diplomats goofed, it was by pushing too hard, by letting their efforts end up in the news.

What's behind the foul-up is not a faulty phone line, but a faulty understanding of the lessons of the Nazi destruction of European Jewry.

No Jew can treat the Holocaust simply as history. It's a powerful symbol that obligates us today. But there have always been two ways that Jews read the symbol.

For some, the Nazis' crime is essentially that they killed Jews. Its lesson is that we must make sure that no one ever poses a threat to Jews again. As victims of the ultimate crime, the Jews are owed a huge moral debt by the rest of the world, but our only obligation is to protect ourselves.

The second school also stresses that the Nazis singled out Jews. To forget that is to erase the victims' names from their tombstone. But on a moral level, what makes the Nazis' action a crime is not that the victims were Jews, but that they were people. It's that the criminals defined a part of humanity as less than human and proceeded to eliminate it by mass murder.

Read that way, our history tells Jews that we have a special duty to speak out against any act of genocide, whoever the victims may be. It doesn't matter whether the killers use guns, gas chambers or hydrogen bombs.

The difference between the two views is as clear as the line between egotism and ethics.

Sadly, Israel's diplomats took the path of egotism.

If something helps wash away the bad taste, it's the public reaction in Israel. Members of the Knesset from across the political spectrum have signed a statement denouncing "all efforts to consign mass murders of any kind to oblivion." Their message should guide Israel's response to any genocide, past or threatened.

[From the Long Island Jewish World, Oct. 27-Nov. 2, 1989]

MORALS, DIPLOMACY AND GENOCIDE IN ARMENIA

The Israeli newspaper *Ma'ariv* has expressed its outrage over reports that the Israeli government has been pushing the American Jewish community to lobby against a Congressional resolution commemorating the 75th anniversary of the massacre of Armenians by the Turks. We, too, find these reports extremely disturbing. We hope that the denials coming from the Israeli government and American Jewish organizations (reported elsewhere in this issue) are true.

Ma'ariv writes: "There are reports that the reason for this (lobbying) is a promise given by the Turkish Government to Israel to improve relations, and perhaps to raise the level of relations from the limbo they are in now.

"Someone in the Jewish community," the paper continues, "decided to wage this campaign . . . [someone who] does not want competition for the Holocaust, and therefore is not interested in commemorating the Armenian holocaust.

"In the eyes of the world, the Armenian sacrifice is no less important than the Jewish Holocaust. Those who very justifiably appeal to the conscience of the world not to forget or to downplay the Jewish Holocaust cannot demand that the genocide of another nation be played down, for any reasons whatsoever.

"Perhaps if the world had not remained silent about the murder of the Armenians, it would have been more difficult to murder 6 million Jews a quarter of a century later.

Ma'ariv concludes, "The very dubious gain of an improvement in relations with Turkey cannot justify a step that is so immoral, unconscionable and impractical as Israeli or Jewish aid to a Turkish effort to prevent the commemoration of the Armenian atrocity and its victims."

At the beginning of this century, first the Ottomans and then the Turks were determined to prevent the Armenians from gaining their independence and reestablishing their ancient and much-conquered kingdom—a kingdom which, legend has it, was founded by one of Noah's descendants. In 1915, the Armenians mounted a resistance campaign against a Turkish policy of forced transfer. By 1921, the Armenians had lost somewhere close to 1.5 million people and the last vestiges of independence. Armenia, by treaty, was parceled out in pieces to Turkey, the Soviet Union and Iran.

Turkey's claim is that it is wrong to characterize what happened as genocide. Instead, the Turks argue that it was a civil war that resulted in massive numbers of dead on both sides.

Historians continue to debate the facts of what happened to the Armenians. There seems little doubt, however, that Turkey was intent on eliminating Armenia, a rebellious entity, from the Turkish landscape. Whether its motives were genocidal or territorial, the results were the same. There is no Armenia and the remnants of the Armenian people are scattered around the world.

In addition to the Senate resolution, it is also reported that Turkey is concerned about the U.S. Memorial Holocaust Museum being built in Washington. There are plans to include material in the museum's library involving genocidal attacks against people other than the Jews. At the very least, the museum is likely to include a famous question asked by Hitler when he was making a case for his "final solution": "Who remembers the Armenians?"

It is time Turkey—a country that does much better than most of its neighbors in terms of respecting its minorities and the human rights of all of its citizens—stopped fighting a 75-year-old war. Turkey should express its sorrow for what happened, share in mourning the dead, and make peace, at last, with the Armenian people. Turkey could contribute greatly to the resolution of this issue by making all its archives available to historians, something that it may be prepared, at last, to do.

The members of the Jewish community who have taken Turkey's side in this sad battle contribute nothing to the process of healing that must take place between Turkey and the Armenian community. And they have done poor service to Jews everywhere. Turkey has a thousand times more to gain from good relations with its Jewish community and with Israel than the death of a Senate resolution or the deletion of a quote from a memorial library. But if we are so eager to trade our moral values for minor diplomatic gains, why should we expect anything more from Turkey?

[From the Jerusalem Post, Oct. 25, 1989]

BETWEEN ANKARA AND JERUSALEM

For years Israel has been under pressure from Turkey to deny support for allegations that a massacre of one million Turkish Armenians was perpetrated by the Ottoman army during World War I. Recently the pressure was appreciably scaled up. That was because the U.S. Senate has been considering a resolution, offensive to Turkish sentiment, that the 75th anniversary of the inauguration of the Armenian genocide be officially commemorated next April.

Turkey proposed to induce Israel to lean, both directly and through the organized American-Jewish community, on its friends in the Senate to spike the offensive resolution.

The reasoning must have been roughly like this: If Jews, the world's leading experts on genocide, were to testify that no massacre of Armenians had taken place, the testimony would be taken as proof. Especially since American Jewry's word, as dictated by Israel, carries much weight in Washington. The Turkish government did not, of course, neglect to advise the U.S. administration, too, of the damage that the Senate resolution might do to relations with America's Nato ally. President Bush was duly impressed, but the Senate was not.

A group of professional Jewish PR "consultants" were hired, who went on to uninhibitedly plug Ankara's case. Several major American-Jewish organizations were contacted, but their leaders turned out to be rather undecided. Being Jewish, they felt a natural sympathy for the American victims of an earlier genocide. But, again being Jewish, they also appreciated the legitimacy of Israel's own desire to improve, not injure, relations with Turkey, a Moslem country.

Most helpful, however, to the Turks appears to have been Israel's embassy in Washington.

Why? Presumably, the embassy was greatly worried that the Turks would retaliate against a refusal to cooperate on the Senate resolution by reducing the already low level of their diplomatic representation in Israel. According to one report, the embassy had also been apprised, indirectly, that in return for Israel's assistance Turkey would upgrade its legation in Tel Aviv to a fully fledged embassy.

News about the embassy's involvement in the Senate resolution imbroglio first broke last week. For several days no official comment was forthcoming from either Washington or Jerusalem. The question could not be answered whether the embassy's action, so singularly lacking in sensitivity to the moral aspect of the issue, was strictly partisan, or whether it reflected the Foreign Ministry's policy.

Finally, on Monday, the word was out that "overzealous" Washington embassy officials had exceeded their brief by lobbying against the Senate resolution; and that they had been ordered by the ministry to cease and desist. Israel, the ministry's spokesman said, is very sensitive to the sufferings of the Armenian people.

Turkey is a friendly land; and it should in the friendliest, and most diplomatic, of terms be advised that the attempt by the old Ottoman rules, back in 1915, to make the "traitorous" Armenians into authors of their own misfortune, does not serve well as the basis for contemporary relations.

Anything less could in the end only serve the cause of those who would deny the Holocaust and absolve the Nazis of their historic crime against the Jewish people.

Mr. DOLE. Mr. President, every one of these items—each from the pen of a Jewish writer—speaks eloquently on behalf of the Armenian community. Every one of them expresses the same kind of sorrow I feel—that not all Jews have seen fit to understand the suffering of the Armenian people.

Mr. President, there has been a lot of hysteria about this joint resolution. I hope, somehow, we can put it behind us, so that we can sensitively and soberly consider just what the joint resolution says—and what it does not say.

As that process goes forward, I hope that people of good will everywhere can come together in some expression of remembrance of the many hundreds of thousands of Armenians who died, and can achieve a better understanding of the still awful sorrow of Armenians around the world.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DASCHLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DASCHLE. Mr. President, I ask unanimous consent to speak as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

FAILING TO TELL THE TRUTH

Mr. DASCHLE. Mr. President, this morning we impeached a judge from Mississippi for failing to tell the truth. Those decisions are always very difficult and certainly, in this case, it came after a great deal of concern and thoughtful analysis of the facts.

I could not help but notice, however, that prior to the consideration of these impeachment articles this morning, the distinguished Senator from Arkansas brought a case to the floor that had nothing to do with impeachment offenses, but, in my view, was just as wrong.

While Judge Nixon was impeached this morning for not telling the truth in order to help one or more of his friends, the distinguished Senator from Arkansas [Mr. PRYOR] called to the attention of all Members of the Senate another clear example of failing to tell the truth. He cited Lee Atwater's letter, a letter that went out to perhaps tens of thousands of American people, in which Mr. Atwater indicated that it was the Democrats in Congress who had passed legislation that placed a new tax on all senior citizens.

I would quote from the letter:

Before President Bush was elected, the Democrats in Congress passed legislation which just recently went into effect and placed a tax on senior citizens to pay for Catastrophic Health Insurance. Do you support this new tax on senior citizens?

That is not the truth. I am sure Mr. Atwater knows it is not the truth. Anytime anyone in the public trust, whether he is elected or not, distorts the truth to that extent, someone must call him on it. Someone must bring to the attention of everyone here as well as to the American people that Mr. Atwater is not right.

And so in just a couple of moments I would like to add to what the distinguished Senator from Arkansas already said this morning. It is important, in spite of all the debate—and there has been some good debate about this issue—that a fact like that be clarified so that there is no misunderstanding about how we got here in the first place.

The Reagan administration began this whole effort on Catastrophic Health Insurance when Dr. Otis Bowen, then the Secretary of Health and Human Services, proposed to the Congress an administration-backed catastrophic proposal that was financed solely by premiums on the elderly. President Reagan conditioned his support of catastrophic legislation on the criterion that the bill be financed by senior citizens with no outside revenue.

Republicans—and I must say Democrats—came to the conclusion, if we were to pass the bill, this was the price we would have to pay. Ultimately, the measure passed in the Senate by an overwhelming bipartisan majority of 86 Senators. The Reagan administration supported this bill, as does the current administration.

In fact, as recently as September 20 of this year, Dr. Sullivan came before the Finance Committee and said, "I am here to speak on behalf of the administration on this issue. I wish to emphasize that this legislation, we have continued to believe, meets a very real need in protecting our elderly citizens from the possibility of financial ruin at a vulnerable time in their lives. Our position is that we would prefer not to have this bill altered at all."

He did not say let us take out the tax. He did not say, in spite of Mr. Atwater's admonition to Democrats that this is an unfair tax, now is the time to eliminate it. He said, we the administration support this bill right down the line.

In case there is any misunderstanding, on June 8, 1988, then Vice President Bush said:

It means the elderly will not have to live in fear that their life savings will be wiped out by a prolonged hospitalization.

Then he said on September 25:

I am proud to have been part of an administration that passed the first catastrophic health bill.

Just this year, President Bush said:

As Vice President, I supported President Reagan's signing of H.R. 2470. It would be imprudent to tinker with Medicare catastrophic insurance literally in its first few months of life. We should not reopen the legislation.

Louis Sullivan, June 1, 1989:

Catastrophic health insurance represents the most comprehensive expansion of medicare since 1965. The concept of catastrophic health insurance was forwarded by the former administration and embraced by the Congress over two years ago.

It would be extremely injudicious to reduce the supplemental premium revenues before all of the catastrophic benefits are fully implemented.

I do not blame the American people if they are a little confused, Mr. President. On the one hand, you have the Presidents, both from the previous administration and this one, as well as the Secretary of Health and Human Services, both in the previous administration and this one, very strongly asserting their support for the catastrophic program that was passed 2 years ago.

On the other hand, you have the Chairman of the Republican National Committee going to the American people and saying, "Before President Bush was elected, the Democrats in the Congress passed legislation which just recently went into effect and placed a tax on senior citizens to pay for catastrophic health insurance."

I ask unanimous consent that a number of other quotes pertaining to the catastrophic bill be printed in the RECORD at this time.

There being no objection, the statements were ordered to be printed in the RECORD, as follows:

STATEMENTS BY REPUBLICAN LEADERS ON CATASTROPHIC LEGISLATION

October 27, 1987. Senator Hatch: "I rise today to applaud this legislative initiative. . . . This initiative represents months of congressional oversight following President Reagan's challenge to Congress to enact such legislation. . . . I am concerned that some want to play partisan politics with the health care of our citizens. The issue should not be who receives the credit for developing this legislation. . . ." (*Congressional Record* statement at the time of Senate passage).

October 27, 1987, Senator Domenici: "I am glad that the Congress is tackling this important health care problem. . . . I commend President Reagan and Secretary Bowen for bringing this issue to the forefront, and for making important contributions to the final passage." (*Congressional Record* statement)

May 25, 1988, Secretary Bowen: "It has my personal support." (Statement he made following conclusion of conference. "Congressional Quarterly" quote)

June 2, 1988, Representative Michel: ". . . today, I am happy to support the program that has long been desirable and requested by our President." (*Congressional Record* statement)

June 8, 1988, Vice President Bush: "It means the elderly will "not have to live in fear that their life's savings would be wiped out by a prolonged hospitalization." (Associated Press report on Bush's support for the bill)

June, 1988, Senator Dole: "(T)here is a great deal that I believe we can be proud of with respect to the bill." (Quoted in "Congressional Quarterly")

June 8, 1988, Senator Durenberger: "Mr. President, it is with great pleasure and pride—even some emotion—that I urge my colleagues to join in overwhelming support of the conference agreement. . . . Everyone who knows the history of health policy in this country recognizes the importance of this landmark legislation." (*Congressional Record* statement)

June 8, 1988, Senator Thurmond: "I also wish to commend Secretary Bowen for the important contributions he has made in seeking solutions to this problem. Mr. President, I urge my colleagues to support this conference report." (*Congressional Record* statement)

July 1, 1988, President Reagan: "Well, that initiative (referring to his State of the Union Address and the Administration's catastrophic health care bill introduced by Senator Dole) has produced an historic piece of legislation, and in a moment, I will sign the Medicare Catastrophic Coverage Act of 1988." (Remarks on signing Medicare Catastrophic coverage Act 1988)

September 25, 1988, Candidate and V.P. Bush: "I am proud to have been part of an Administration that passed the first catastrophic health bill." (1st Presidential debate)

April 21, 1989, President George Bush: "As vice-president, I supported President

Reagan's signing H.R. 2470. . . . It would be imprudent to tinker with Medicare catastrophic insurance literally in its first few months of life. We should not reopen the legislation." (letter to Rostenkowski)

June 1, 1989; Louis Sullivan: "Catastrophic health insurance represents the most comprehensive expansion of Medicare since 1965. The concept of catastrophic health insurance was forwarded by the former Administration and embraced by Congress over two years ago." (Senate Finance hearing testimony)

June 1, 1989, Louis Sullivan: ". . . (E)veryone—Congress, the Reagan Administration, and beneficiary groups—supported, on balance, the legislation. . . . We remain committed to the continuing implementation of catastrophic health insurance under Medicare. . . . It would be extremely injudicious to reduce supplemental premium revenues before all of the catastrophic benefits are fully implemented." (Same as above.)

June 10, 1989, Senator Dole: "We need to recognize that this is a Republican initiative that we are about to dismantle here." ("Congressional Quarterly")

September 20, 1989, Louis Sullivan: "We believe that this legislation meets an important need for our elderly citizens. . . . Our position, again, I want to repeat, is that we would rather not tamper with the legislation at all." (Finance Committee Hearing)

Mr. DASCHLE. Mr. President, there is probably nothing illegal about what Mr. Atwater did, and I understand his political motivations. However, I hope this case will serve a useful purpose in calling attention to the fact that when someone distorts the truth as significantly as Mr. Atwater did in this case, he and everyone else ought to know a lie from the truth. It may not be an impeachable offense, it may not be illegal, but it is wrong.

TERRY ANDERSON

Mr. MOYNIHAN. Mr. President, today marks the 1,693d day that Terry Anderson has been held in captivity in Beirut. He is not alone. A recent report indicates that as many as 19 Westerners may currently be held as hostages in Lebanon.

I ask unanimous consent that this report be printed in the RECORD.

There being no objection, the report was ordered to be printed in the RECORD, as follows:

[From Reuters: Oct. 6, 1989]

NINETEEN WESTERNERS COULD BE HOSTAGES IN LEBANON

The abduction of two Swiss workers for the International Committee of the Red Cross (ICRC) on Friday raised the number of Westerners who could be hostages in Lebanon to 19.

Emmanuel Christen, 25, and Elio Erriquez, 23, ICRC orthopaedic technicians, were seized by three gunmen outside a centre for the handicapped in the southern port of Sidon.

The other Westerners kidnapped in Lebanon by various militant groups and believed held hostage are:

West Germans Heinrich Struebig, 48, and Thomas Kempner, aid workers caring for Palestinian refugees in south Lebanon, abducted by gunmen in Sidon on May 16 this year.

Briton Jack Mann, 75, retired airline pilot and nightclub manager, kidnapped in Moslem west Beirut on May 12 this year.

Americans Robert Polhill, 54, Jesse Turner, 40, and Alann Steen, 50, teachers at Beirut University College, taken from its west Beirut campus on January 24, 1987. Islamic Jihad for the Liberation of Palestine claimed responsibility.

Briton Terry Waite, 50, envoy of the Archbishop of Canterbury, disappeared in Moslem west Beirut on January 20, 1987, while on a mission to win the release of two Americans.

Americans Joseph Cicippio, 59, administrator at the American University of Beirut, seized on September 12, 1986, and Edward Tracy, 57, freelance writer and book salesman, seized on October 21, 1986. The Revolutionary Justice Organization says it holds them.

American Frank Herbert Reed, 58, director of the Lebanese International School, abducted in west Beirut on September 9, 1986. The Arab Revolutionary Cells claimed responsibility.

Briton John McCarthy, 31, journalist for Worldwide Television News, seized on April 17, 1986. The Revolutionary Commando Cells claimed it held him but provided no proof.

Brian Keenan, 36, university teacher with dual British-Irish nationality, kidnapped in west Beirut on April 11, 1986.

Alberto Molinari, 65, Italian businessman, missing since September 11, 1985.

Farik Wareh, 65, businessman of Syrian origin with U.S. nationality, missing since June 29, 1985. The United States does not include him on its list of American hostages in Lebanon.

Florence Raad, 35, journalist with joint Lebanese-French nationality, missing since May 1985.

Americans Terry Anderson, 41, Middle East bureau chief for The Associated Press, seized on March 16, 1985, and Thomas Sutherland, 58, dean of Agriculture at the American University of Beirut, taken on June 9, 1985. Islamic Jihad (Holy War) says it holds them.

"60 MINUTES"—PROFILE OF MARIAN WRIGHT EDELMAN

Mr. KENNEDY. Mr. President, on Sunday evening, October 22, the popular, widely respected CBS television program "60 Minutes" carried an eloquent and perceptive profile of Marian Wright Edelman, the founder and president of the Children's Defense Fund. All of us in the Senate on both sides of the aisle are well aware of her extraordinary leadership, commitment, and achievements on children's issues, and I ask unanimous consent that a transcript of the profile may be printed in the RECORD.

There being no objection, the transcript was ordered to be printed in the RECORD, as follows:

EXCERPT FROM "60 MINUTES" ON CBS, PROFILE OF MARIAN WRIGHT EDELMAN, OCTOBER 22, 1989

ED BRADLEY: Her name is Marian Wright Edelman. Yale Law School, Class of '63; the first Black woman admitted to the Bar in the State of Mississippi. Active in liberal Democratic politics, but admired by one of the Senate's most conservative Republicans, who says she fights more effectively for children than anybody else in our society. Marian Wright Edelman is the founder of the Children's Defense Fund. Her constituents are America's 63 million children. They may not vote and they may not have any money to contribute to election campaigns, but they have relatives who vote and contribute to campaigns. And she told Harry Reasoner she never lets the men and women she lobbies up on Capitol Hill forget that.

MARIAN WRIGHT EDELMAN: Everybody loves children. Everybody is for them in general. Everybody kisses them in elections. Everybody thinks it's like motherhood and apple pie. But when they get into the budget rooms, or behind closed doors—to really decide how they're going to carve up money—children get lost in the process because they are not powerful.

Now, one of the messages we've got to get across to people in South Carolina, and to the nation as a whole, is that you don't have to like these black and brown children, but we're going to need them economically. There are children that are either going to be invested in now and they're going to grow up and be strong workers and produce for us, or they're going to grow up and they're going to shoot at us because we have not taken the care.

And we're trying to pass the Act for Better Child Care Services, which we call the ABC Bill.

HARRY REASONER: Senator Orrin Hatch of Utah is one of the sponsors of the Act for Better Child Care. ABC for short. A comprehensive bill for federal aid to children's programs. Hatch, an ultra-conservative whose name on the bill has gotten him into trouble with a lot of his own supporters, says he got behind the bill because it makes sense for the country. And he is wryly amused at Marian Wright Edelman's effectiveness with her more natural allies among Democrats.

Senator ORRIN HATCH: I've seen people who are absolutely deathly afraid of her who sit here in Congress. I've had Senators come up to me and say, well, we've got to make sure that Marian goes along—'cause if she doesn't it isn't worth the pain.

HARRY REASONER: If she calls for an appointment, they see her.

Senator HATCH: That's right. If she calls for an appointment, I think they say how soon can you be here?

HARRY REASONER: A conservative Senator told us, speaking of you, that he knows dozens of liberal Senators who blanch and try to hide in the men's room when they hear you're in the building.

MARIAN WRIGHT EDELMAN: Oh, I don't believe it. That's terrific. I don't believe that. I can be tough as nails just as anybody who believes in anything has to be tough as nails. This is not an easy time to survive in.

HARRY REASONER: You have no objection to twisting arms.

MARIAN WRIGHT EDELMAN: I have no objection to twisting arms for kids. I have no objection doing anything that the law permits me to do for kids. I think that nothing is more important to have Senators vote on and do the right thing about.

HARRY REASONER: They think you're honest.

MARIAN WRIGHT EDELMAN: Well, I hope so. I don't want anything. I don't have any money. Children don't have any great votes. I think that what we're about is trying to get them to do what is right for the nation

and to do what is right for the nation's weakest citizens.

HARRY REASONER: Would she aspire to being in the government instead of outside pushing it?

SENATOR HATCH: Well, I don't know why she'd want to be a U.S. Senator or Congressperson or even President. She has more power where she is doesn't she? You know you've got to be pretty powerful to be more powerful than Marian Wright Edelman in my viewpoint.

HARRY REASONER: That power starts here at the office of the Children's Defense Fund, which now employs ninety people. But power is a vague word. What do they do? Well, Marian Wright Edelman will tell you they work on the Lord's side on every issue that affects children.

MARIAN WRIGHT EDELMAN: We spend a great deal of our time doing research and identifying the problems that affect millions of children—rich and poor, white and black—and then we say what ought to be done about those problems. And then we lobby. Each year we analyze the President's budget and how it affects children. We're doing that increasingly at the state level. We try to enforce the laws that are already on the books when children's rights are being violated or where a law that's there to protect their health care or to protect their rights to remain in their families or if they're abused in foster care—we will sue.

We have such a hard time getting people to understand we don't litigate all the time. And we don't lobby all the time. We lobby a lot. We do everything that the law permits us to do for children.

And so you have to stay there all the time on them. You have to watch every minute. You have to stand outside the door. And most of changing social policy is just dogged hard work and persistence. There's no great magic about it. You just have to stay on people and make it easier for them to do what you want them to do than not to do it. So we're a good pest—I'm a good pest is what I am.

CHILDREN SINGING: I am a great big bundle of potentiality.

HARRY REASONER: The young Marian Wright's possibilities and potential came from here—in the Baptist Church in her home town of Bennettsville, South Carolina. Her late father was the preacher. And she says this church was the hub of her existence as a child. Her parents, and a strong community of Black adults, were the buffers against the outside segregated world that told her as a Black child she wasn't worth much. Her father died when she was fourteen years old.

MARIAN WRIGHT EDELMAN: I went off with the ambulance with my daddy the night he died. And he, in that ambulance, made it very clear to me that I, as a Black girl, could be anything, do anything, and how important it was not to let anything get between me and my education and everything I could be.

HARRY REASONER: Becoming everything she could be eventually took her to Spellman, a classy Black women's college in Atlanta. She spent her third year at Spellman, studying in Switzerland and the Soviet Union. In 1959, she came back, wondering how she would fit back into this restricted, segregated world.

MARIAN WRIGHT EDELMAN: One day I went down to do volunteer work for the local NAACP, and my job was to look at all the complaints that had come before them. And I got so angry at the number of people—poor people, Black people, because many white lawyers back then wouldn't take civil rights cases—who had come to the local office needing legal help and couldn't get it.

HARRY REASONER: By 1964, she had turned that anger and desire to help poor Black people into a law degree from Yale and headed to the heart of the civil rights struggle, Jackson, Mississippi, where she became the first Black woman admitted to the bar in that state. When Robert Kennedy, in a Senate subcommittee on poverty, came to Jackson in April 1967, Marian Wright got the chance to testify at a public hearing. She told the Senators that people were starving and invited them to take a tour and see the hunger and poverty for themselves. Kennedy was one of the Senators who agreed to take that tour. But first he sent one of his legislative assistants, Peter Edelman, to meet Marian Wright.

PETER EDELMAN: What's burned in my mind is seeing children in the United States of America who had bloated bellies, and who had sores that wouldn't heal. That was what was shocking about Mississippi in 1967.

HARRY REASONER: Three days after the hearings, Marian Wright took Senator Kennedy on a tour of the Mississippi Delta.

MARIAN WRIGHT EDELMAN: We just went into individual houses of poor people, and knocked on their doors, sat down and talked to them, looked into their refrigerators, asked them what they had for breakfast, asked them what they had for supper. And Robert Kennedy was amazing to watch. He was a man who had great compassion. And my favorite incident, which made me a Robert Kennedy fan, was when he walked into a shack in Cleveland, Mississippi, away from TV cameras, walked through to a kind of a mud kitchen and saw a baby sitting over in a corner, a dark corner—with a bloated belly—and he got down with that baby and tried to get a response and couldn't. And he was just visibly moved and angry, as he should have been. But that was, I think, the beginning of his real commitment to ending hunger in this country.

HARRY REASONER: Is it all gone now?

MARIAN WRIGHT EDELMAN: I think in the late '70's we virtually eliminated serious hunger in America. And what makes me very angry is that it returned in the '80's. And I hope we can rediscover in the '90's the kind of commitment the nation had, to see that no child went hungry in the '70's.

ANNOUNCER: One year after that tour, and one month after Robert Kennedy was assassinated, Peter Edelman and Marian Wright were married. Apart from your mutual interest in civil rights and advancement of human kind, what attracted you?

PETER EDELMAN: What attracts two people to each other?

MARIAN WRIGHT EDELMAN: He's a nice man. He's a smart man, and I thought he'd be a terrific father, which is true. We shared values. But he's a kind man whom I thought would also be big enough to let me be me. And that's not easy for somebody, I suspect.

HARRY REASONER: I mean it's enough of a hazard to get married, but if it's an interracial marriage——

PETER EDELMAN: I don't think we thought a lot about it in a way of intellectualizing or articulating—I'm sure we were both aware of what we were doing, but I think we fell in love with each other and got married.

HARRY REASONER: Today, Peter Edelman is the Associate Dean of the Georgetown Law School in Washington, where the Edelmans live with their three sons, who they say pay less attention to the inter-racial marriage and more attention to their different religious backgrounds. Baptist in her case, Jewish in his.

MARIAN WRIGHT EDELMAN: We have ecumenical Bar Mitzvahs with my side of the family and his side of the family, with a Rabbi and with my Baptist preacher brother. And the important point about those Bar Mitzvahs is that we're saying that whatever divides us is far less strong than what unites us.

HARRY REASONER: If some night you were talking to your boys about how it was when the two of you got married, what would you tell them? How would you describe Mississippi in 1967?

MARIAN WRIGHT EDELMAN: It was tough. It was a struggle. Everything was segregated. I keep trying to remind them how their freedom today to go and do everything they want to do, or to go any place, was not a right that I had as a child growing up.

HARRY REASONER: Marian Wright Edelman is by nature an optimist. But in the late '80's she sometimes sounds—for her—a little down.

MARIAN WRIGHT EDELMAN: I think many kids in America really are terrified. And I think that many of them are hopeless. And I don't think that I have sensed the kind of despair that one feels in some inner cities and rural areas today—ever. Because even when it was bad in the old segregated days, we always had a sense that we could struggle and make things better. We had supports in our day. We had families and churches that cared about us and worked with us and struggled with us. And there was never a time when I was growing up that I didn't think I could change the world. I don't think young people today—enough of them—feel they can change the world.

HARRY REASONER: Have you changed the world, Marian? Have you made a difference?

MARIAN WRIGHT EDELMAN: I hope I've made a difference as one person. I haven't changed it as much as I still want to change it.

ED BRADLEY: Marian Wright Edelman's dogged hard work and persistence may be paying off as different versions of her ABC Child Care Bill have now passed the Senate and the House. A conference committee will try to iron out the differences.

ALOHA ISLAND-AIR FLIGHT 1712: ALL HAWAII MOURNS

Mr. MATSUNAGA. Mr. President, neither prophet nor philosopher, neither sage nor scholar, has ever satisfactorily explained why death is allowed to rob us of our young; why the laughter and shouts and cries of youth can so suddenly give way to a stillness and a heavy silence that descend upon our homes and cast a shadow over our lives; why man in all his reason, knowledge, and caution is powerless to stop death from entering our homes and taking away our children. And yet it happened again this past Saturday, on Molokai.

Death claimed the lives of 20 passengers aboard an Aloha Island-Air twin-engine airplane on a 20-minute commuter flight from Kahului, Maui, to Hoolehua, Molokai. The plane crashed

into a ridge in Molokai's Halawa Valley. And now all Hawaii mourns.

The tragedy has especially devastated the small, tight-knit community of Molokai Island, population 6,000, where the concept of ohana, or family, forms the basic bond of the community. Eight of the passengers—Lea Dunham, Leilani Ahina, Nancine "Kaipo" Mahiai, Natalie Helm, Aloma Spencer, Jared Keawepuahikinaokamalamalamaonalani Elia, Jovencio Ruiz, and Testa "Travis" Ku—were members of Molokai High School's girls' and boys' volleyball teams returning from a match on Maui. These young students were accompanied by the girls' coach, Odetta Reyes Rapanot, athletic director John Ino, and three other Molokai residents: Colette Loke Kekalia, Nancy Pierce, and Rodrigo Senica. Also on board were Hank Gabriel of Maui, Peter and Elizabeth Wiley of Pennsylvania, John and Christina Craig of Texas, and the flight crew: Captain Bruce Pollard and First Officer Phil Helfrich.

Mr. President, the healing in Molokai will require much time, patience, and a vast reservoir of aloha and ohana as the community draws together like never before. No doubt some will find painful irony in the fact that fate would have the victims die even as they celebrated life: Peter and Elizabeth Wiley had been married one week and were on their honeymoon; John Craig flew to Hawaii to celebrate his 32d birthday; the student athletes and their coach were reveling after successful matches in Maui; Colette Kekalia was returning home from routine dialysis treatment; and First Pilot Phil Helfrich, a competent and professional crewmate of 1½ years experience with Aloha Island-Air, had set his sights on becoming a full-fledged pilot.

I pray that the community will find renewed strength as it pulls together to begin the healing and to let the pain and grieving run their course. I pray that the families and friends of the 20 passengers will find solace in the good Lord's infinite comfort, strength in His abiding grace, and understanding in His eternal wisdom. But most of all, I pray that the sound of laughter and shouts of joy of Molokai's children will return; that neighbor will smile and nod at neighbor once again; and that life in this small island community will resume as it has for generations with warm remembrances of those who have gone before. Surely, we can give no higher honor to the 20 individuals whom we now mourn than by approaching our lives and remembering them in the very spirit in which they lived: To live our lives as a celebration and with thanksgiving and to embrace each day with joy.

RECESS UNTIL 2:30 P.M.

Mr. DASCHLE. I ask unanimous consent that the Senate stand in recess until 2:30.

There being no objection, the Senate, at 12:56 p.m., recessed until 2:30 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. ROBB].

RECESS UNTIL 3:30 P.M.

The PRESIDING OFFICER. In my capacity as a Senator from Virginia, I ask unanimous consent that the Senate stand in recess until 3:30 p.m. today.

There being no objection, the Senate, at 2:30 p.m., recessed until 3:37 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. SANFORD].

The PRESIDING OFFICER. The Senate will come to order.

The Chair, in his capacity as a Senator from Kentucky, suggests the absence of a quorum.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

The PRESIDING OFFICER. The Chair, in his capacity as a Senator from Kentucky, asks unanimous consent that the quorum call be rescinded.

Without objection, it is so ordered.

The Chair asks unanimous consent that we stand in recess until the hour of 4:15 p.m.

Hearing no objection, the Senate stands in recess until 4:15 p.m.

There being no objection, the Senate, at 3:37 p.m., recessed until 4:17 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. PRYOR].

MESSAGES FROM THE HOUSE

At 2:30 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the following bill, without amendment:

S. 1827. An act to revise and clarify the authority of the Administrator of General Services relating to the acquisition and management of certain property in the city of New York.

MEASURES PLACED ON THE CALENDAR

The following bills, previously received from the House of Representatives for concurrence, were read the first and second times by unanimous consent, and placed on the calendar:

H.R. 2710. An act to amend the Fair Labor Standards Act of 1938 to increase the minimum wage, and for other purposes;

H.R. 3199. An act to amend title 38, United States Code, to establish a program to provide post-secondary educational assistance to students in health professions who are eligible for educational assistance under the Reserve GI Bill program in return for agreement for subsequent service with the Department of Veterans Affairs; and

H.R. 3390. An act to amend title 38, United States Code, with respect to certain veterans' education programs, and for other purposes.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute:

H.J. Res. 175: Joint resolution to authorize entry into force of the Compact of Free Association between the United States and the Government of Palau, and for other purposes (Rept. No. 101-189).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. WILSON (for himself, Mr. DECONCINI, Mr. D'AMATO, Mr. PACKWOOD, Mr. COATS, Mr. HEINZ, Mr. LEVIN, and Mr. BAUCUS):

S. 1835. A bill to amend the Drug-Free Schools and Communities Act of 1986 to provide for the awarding of grants for drug abuse resistance education instruction for students, and for other purposes; to the Committee on the Judiciary.

By Mr. SANFORD:

S. 1836. A bill to amend the Internal Revenue Code of 1986 to assist in the recruitment and retention of mathematics and science teachers; to the Committee on Finance.

By Mr. BINGAMAN (for himself and Mr. DOMENICI):

S. 1837. A bill to direct the Secretary of the Interior to establish a Desert Research Center; to the Committee on Energy and Natural Resources.

By Mr. FOWLER (for himself, Mr. COCHRAN, Mr. BOND, Mr. BOREN, Mr. DASCHLE, Mr. MCCONNELL, Mr. PRYOR, Mr. KERREY, Mr. WILSON, Mr. BOSCHWITZ, Mr. COHEN, Mr. GRAHAM, Mr. DECONCINI, Mr. MCCLURE, and Mr. DOMENICI):

S. 1838. A bill to establish or modify research, promotion, and consumer education programs for certain agricultural commodities, and for other purposes; placed on the calendar.

By Mr. INOUYE (for himself and Mr. HOLLINGS):

S. 1839. A bill to provide authorization of appropriations for activities of the National Telecommunications and Information Administration, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. RIEGLE (for himself, Mr. GARN, Mr. CRANSTON, and Mr. D'AMATO) (by request):

S. 1840. A bill to amend provisions of the Bankruptcy Code governing the powers of a bankruptcy court and the effect of automatic stays as they relate to certain multifamily liens insured or held by the Secretary of Housing and Urban Development or the Secretary of Agriculture, and for other pur-

poses; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. RIEGLE (for himself, Mr. GARN, Mr. CRANSTON, and Mr. D'AMATO) (by request):

S. 1841. A bill to amend Federal laws to reform housing, community and neighborhood development, and related programs, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. MOYNIHAN:

S. 1842. A bill to temporarily suspend the duty on insulated winding wire cable and certain electrical apparatus; to the Committee on Finance.

By Mr. DOLE:

S.J. Res. 222. Joint resolution designating 1990 as the "Year of the Eagle Scout"; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. MITCHELL (for himself and Mr. DOLE):

S. Res. 203. Resolution authorizing Senate employee testimony and production of Senate documents in a grand jury investigation; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. WILSON (for himself, Mr. DECONCINI, Mr. D'AMATO, Mr. PACKWOOD, Mr. COATS, Mr. HEINZ, Mr. LEVIN, and Mr. BAUCUS):

S. 1835. A bill to amend the Drug-Free Schools and Communities Act of 1986 to provide for the awarding of grants for drug abuse resistance education instruction for students, and for other purposes; to the Committee on the Judiciary.

GRANTS FOR DRUG RESISTANCE EDUCATION

Mr. WILSON. Mr. President, many of us on this floor have consumed a great deal of time in efforts to try to combat the problem of drugs. We have in latter days voted belatedly on the effort for the reduction of demand as opposed to efforts to interdict drugs both beyond the borders of the United States and those on our streets that have characterized so much of our early effort. Clearly, one of the most successful means available to us is successful, effective drug education.

Of the many good programs which I have become familiar with across the land perhaps the most celebrated is one that I am proud to say was developed by the Los Angeles Police Department and the Los Angeles Unified School District.

It is the DARE Program, DARE being the Drug Abuse Resistance Education Program. Simply stated, Mr. President, this program, which has been now employed in 49 States, is one that does not simply tell children to say no to drugs; it gives them the means whereby they can do it. It tells them how and why, not simply in the sense of reciting the ills of drug use, but it goes to very basic values and equips those childen for that all but inevitable day when, as fourth, fifth, sixth graders, they may encounter to them a rather glamorous figure, a 17- or 18-year-old pusher who comes onto their school grounds, finds them in a park on a playground and offers them free drugs in order to recruit them into their retail sales apparatus.

Mr. President, not long ago in Los Angeles, I went to the Placentia School in east Los Angeles in the heart of the neighborhood that is beset acutely with the traffic in drugs. I witnessed a young police woman, Mercedes Hernandez, conduct a sixth-grade class. I must say that I came away with renewed confidence that the youngsters that were participating with her in drug abuse resistance education would in fact know how and why to say no; that they would have learned from their techniques that will stand them in very good stead. I think they are a very good bet, Mr. President, a good risk to be stronger, stronger in all ways, because they have learned the values themselves and they know why it is that they should not engage in dangerous experimentation.

So, Mr. President, without taking more time, this legislation seeks to place in a freestanding bill what was earlier an amendment to S. 1711, the drug bill which was passed by the Senate, which, unfortunately, does not seem headed for enactment.

As a condition of being funded, grant applicants under this program must meet all program content criteria. Those are set out in the bill. And, indeed, in an effort to try to tell children how and why they must say no to drugs, the applicants need to spell out very clearly how it is in grades kindergarden through 6 they will instruct in drug use and misuse, in resistance techniques, quite specific resistance techniques, assertive response styles, how they can manage stress without drugs, how they can make and must make decisions, how they can evaluate risks, and how they can evaluate influences upon them, including those of the media, having to do with drug use.

They can be instructed that positive alternatives exist. They are instructed in interpersonal and communication skills, in activities that will build their self-esteem, that will allow them to resist the very considerable peer pressure for gang membership. And this classroom instruction will have as a feature the regular, persistent appearance by specially instructed and trained uniformed law enforcement officials.

The results of this through some 6 or 7 years of experience now is that there has been a very good experience, that the goals of this legislation has been met.

Mr. President, the purpose of this authorization is simply to allow districts and States where this is being employed, districts where they have not been able to find funding to do it, to have that additional assistance so that they, too, may instruct their children in self-esteem and in the resistance techniques in order to give them a fair break.

Mr. President, I ask unanimous consent that the text of the bill and certain other materials be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1835

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. GRANTS FOR DRUG ABUSE RESISTANCE EDUCATION INSTRUCTION FOR STUDENTS.

Part D of the Drug-Free Schools and Communities Act of 1986 (20 U.S.C. 3211 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 5136. GRANTS FOR DRUG ABUSE RESISTANCE EDUCATION INSTRUCTION FOR STUDENTS.

"(a) IN GENERAL.—The Secretary may award grants to local education agencies in consortium with entities (such as the Project Drug Abuse Resistance Education project) that meet the requirements of subsection (b), and that have experience in assisting school districts in providing instruction to students, in grades kindergarten through six, to assist such students in recognizing and resisting pressures that influence such students to use controlled substances (as defined in schedules I and II of section 202 of the Controlled Substances Act (21 U.S.C. 812)), the possession or distribution of which is unlawful, or beverage alcohol.

"(b) ELIGIBLE ENTITIES.—A local education agenda in consortium with an entity as described in subsection (a), shall be eligible for a grant under subsection (a) if such local education agency in consortium with an entity provides the Secretary with assurances that it will use the amounts made available under such grant to provide, or arrange for the provision of, services that shall include—

"(1) drug abuse resistance education instruction for students in grades kindergarten through six, to assist such students in recognizing and resisting pressures that influence such students to experiment with or use controlled substances (as defined under subsection (a)), or beverage alcohol, in the following areas—

"(A) drug use and misuse;

"(B) resistance techniques;

"(C) assertive response styles;

"(D) managing stress without taking drugs;

"(E) decision making and risk taking;

"(F) media influences on drug use;

"(G) positive alternatives to drug abuse behavior;

"(H) interpersonal and communication skills;

"(I) self-esteem building activities; and

"(J) resistance to gang pressure;

"(2) classroom instruction by uniformed law enforcement officials;

"(3) the use of positive student leaders to influence younger students not to use controlled substances; and

"(4) an emphasis on activity-oriented techniques designed to encourage student-generated responses to problem-solving situations.

"(c) APPLICATION.—The Secretary shall not make a grant under subsection (a) unless—

"(1) an application for such grant is submitted to the Secretary;

"(2) with respect to carrying out the purpose for which the grant is to be made, the application provides assurances of compliance satisfactory to the Secretary;

"(3) the application otherwise is in such form and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section; and

"(4) the application contains an assurance that the applicant will provide funds, from sources other than Federal sources, that are equal to at least 10 percent of the amount of the grant under subsection (a);

"(d) SUPPLEMENTAL FUNDS.—Amounts received under subsection (a) by the local education agency in consortium with an entity shall be used only to supplement, not to supplant, the amount of Federal, State, and local funds expended for the support of projects of the type described in subsection (b).

"(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section, $10,000,000 for fiscal year 1990, and such sums as may be necessary for each of the fiscal years 1991 through 1993.".

U.S. SENATE,
Washington, DC, October 31, 1989.

DEAR COLLEAGUE: With the recent explosion of crack use and the growing use of "ice," a potent form of methamphetamine (speed), the need to implement effective anti-drug use education programs in our schools has never been greater.

You may be aware of one tremendously successful program, the Drug Abuse Resistance Education (D.A.R.E.) program. D.A.R.E., now provided in forty-nine States, the District of Columbia, and several countries abroad, teaches students kindergarten through sixth grade necessary skills to resist the temptation to use drugs.

To the cue of "ready, set, action," D.A.R.E. students participate in a range of drug abuse resistance activities, including mini-skits to present effective methods to deal with real life situations in which they may be pressured to experiment with drugs.

Other important components of the D.A.R.E. program include encouraging student generated responses to problems, using student peers to deter drug use, and the active involvement of parents and the community. Perhaps the most unique aspect is the use of specially trained police officers to teach the students.

In short, D.A.R.E. provides students with effective ways to say "no."

To assist communities across the country in offering the D.A.R.E. program, I will introduce legislation this Friday to authorize $10 million in Federal funding. For your information, my bill has already passed the Senate as an amendment to S. 1711.

Our children are our most precious human resource. We cannot let the scourge of drug use destroy their dreams and hopes. We must teach them how to be courageous and resist the pressure to use drugs. I urge you to join me in cosponsoring the "Drug Abuse Resistance Education Act of 1989."

Should you wish to cosponsor my legislation, please have a member of your staff contact Karen Strickland at 224-5422.

Sincerely,

PETE WILSON.

D.A.R.E. To KEEP KIDS OFF DRUGS

D.A.R.E. BECAUSE WE CARE

They're our kids. Our future. Our legacy. And we all want the same thing for them—the best.

We want their futures to be bright, and secure, and healthy, and safe. And we want them to succeed. To join us in the worlds of business and commerce, law and medicine, manufacturing and selling, teaching and serving.

That's why we care. About their ability to cope with the challenges of life in contemporary America. About their capacity to resist the negative influences around them, to focus instead on their strengths and their potential.

And that's why we D.A.R.E..

D.A.R.E. TO BELIEVE IN THEMSELVES

D.A.R.E. A simple acronym with a big message. Drug Abuse Resistance Education. It's a crusade that works.

D.A.R.E. teaches our children—from kindergarten through high school—that popularity can be found in positive behavior, that belonging need not require them to abandon their values, that self-confidence and self-worth come from asserting themselves and resisting destructive temptations. D.A.R.E. teaches them not just that they should refuse drugs and alcohol, but how to do so.

D.A.R.E. gives our children the tools they need to build a better, fuller more satisfying life.

The program was created in 1983 as a joint venture of the Los Angeles Police Department and the Los Angeles Unified School District. D.A.R.E. sends a highly-trained police officer into fifth and sixth grade classrooms every week for 17 weeks to teach students how to refuse drugs and alcohol. Separate components have been developed to introduce kindergarten through fourth grade students to the D.A.R.E. program and to follow-up in junior high and high school classrooms, spreading the D.A.R.E. message throughout the schools.

Assigned a "beat" in which they visit each of five schools one day a week, D.A.R.E. officers reach thousands of students every year.

The program follows a carefully structured curriculum, focusing on topics such as personal safety, drug use and misuse, consequences of behavior, resisting peer pressure, building self-esteem, assertiveness training, managing stress without drugs, media images of drug use, role models, and support systems.

By getting the message from a street-wise police officer—one who's been out there, one who knows how drugs and alcohol can destroy lives—kids take that message seriously.

And, by getting to kids when they're most vulnerable to social pressure—when they're 9, 10, and 11 years old or sooner—D.A.R.E. helps them build the willpower and the belief in themselves that they'll need to stay on track as they forge their futures.

D.A.R.E. BECAUSE IT WORKS

D.A.R.E. has been doing its job for half a decade. And it's succeeding.

It's not a one-hour, once-a-year visit by a stranger. It's four-and-a-half months of straight talk and conversation, with someone who becomes a friend, a confidant, an ally. It leaves a lasting impression on kids and their families. And more.

In two studies,[1] one by the Evaluation and Training Institute and another funded by the National Institute of Justice, a sample of students who had completed the D.A.R.E. curriculum shows: significantly less substance abuse, including cigarettes and alcohol; a sharp decrease in school vandalism and truancy; improved student work habits; reduced tension between ethnic groups; reduced gang activity; a more positive attitude toward police; and better student rapport with teachers and school officials.

And now D.A.R.E. is working nationwide, even worldwide. For all our kids.

D.A.R.E. TO REACH AMERICA

Sparked by the extraordinary success of D.A.R.E. in Los Angeles, many law enforcement agencies and school districts sought to have D.A.R.E. in their communities.

The demand was overwhelming. So, in 1987, D.A.R.E. America was established to meet this new need.

D.A.R.E. America, a non-profit corporation, is a potent resource for communities across the country, helping them to establish D.A.R.E. programs—or to improve an existing one.

The specific functions of D.A.R.E. America are: financial support for instructor training, coordinating fund-raising and sponsorship opportunities, and regularly monitoring instruction standards and program results. It also helps provide participating communities with educational materials, program outlines, student workbooks, drug awareness information for parents, information pamphlets for citizens and community groups * * * everything needed to put D.A.R.E. to work.

And work it has.

President George Bush's endorsement underscores that: "I've been out there and witnessed the program in action. D.A.R.E. sends these police officers into the classroom to work with the kids, build their self-esteem, teach them that they can refuse when they're pressured to try drugs * * *."

In 1989, D.A.R.E. America will reach 3 million children in 50,000 classrooms.

D.A.R.E. is taught in communities across the face of our nation and in Australia, Canada, New Zealand, and American Samoa.

D.A.R.E. is the official program of the Department of Defense Dependent Schools worldwide.

But its continued growth depends on you.

As a leader in your community, you can make things happen—right now. Meet with your local law enforcement agencies, your school board, chamber of commerce, business and professional associations. Help establish D.A.R.E. in your city, your home town.

D.A.R.E. America is a non-profit program dependent on private and corporate donations for its success. But it's a Blue Chip investment. Contributions to D.A.R.E. head straight for the classroom, reaching our young people before they're captured by drugs and alcohol. Reaping benefits for generations to come.

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[1] Source: "A Short Term Evaluation of Project D.A.R.E." by Bill Dejung. Published in Journal of Drug Education, 1987.

D.A.R.E. BECAUSE YOU CARE

This nation's leading law enforcement officers agree on one thing. They aren't about to beat the drug problem from the supply side. Not in our lifetime * * * and maybe not even in our children's.

Only by attacking the drug problem from the demand side can we hope to halt the flow of drugs. And that's where our children are. Let's be there with them. Let's D.A.R.E. to win.

To join the crusade, call: D.A.R.E. America, 1-800-223-DARE or write us at: D.A.R.E. America, P.O. Box 2090, Los Angeles, CA 90051-0090.

By Mr. SANFORD:

S. 1836. A bill to amend the Internal Revenue Code of 1986 to assist in the recruitment and retention of mathematics and science teachers; to the Committee on Finance.

MATHEMATICS AND SCIENCE TEACHER RECRUITMENT AND RETENTION ACT

Mr. SANFORD. Mr. President, our Nation's approach to math and science education has not worked. According to a study recently released by the Educational Testing Service, American 13-year-olds performed at or near the bottom on a new six-nation international mathematics and science assessment.

Only 40 percent of the United States students tested could perform two-step math problems, the study showed, while 78 percent of South Korean pupils—the leaders in the assessment—demonstrated such skill.

Ten years from now, the United States will need a million more chemists, biologists, physicists, and engineers than it will graduate. Half of the new math and science teachers in America are unfortunately not trained to teach their subjects. The number of American college students majoring in math and science is shrinking, and the scientific performance of American high school students is abysmal.

Historically, the educational community has been forced to handle teacher shortages in such subjects as physics, mathematics, chemistry, and computer science by reducing or eliminating requirements for entry into the profession. The result, according to 1987 report by the National Science Teachers Association, is that nearly one-third of all high school students in the United States takes math or science courses from instructors not qualified to teach the subject.

The Federal Government typically has responded by providing loosely controlled and generally ineffective student scholarships designed to encourage math and science majors, and demonstration projects. This has proven to be a costly, scatter-shot, and generally ineffective approach.

We need a new approach, which is why I have joined with Congressman DURBIN in drafting the Science and Mathematics Teacher Retention and Recruitment Act. Our proposal would provide carefully targeted tax benefits to qualified educators and professionals, both to keep and attract math and science teachers in our elementary and secondary public school classrooms.

This legislation would:

Offer a $1,000-a-year Federal tax credit to any activity employed teacher who has at least 5 years' teaching experience, and who takes at least six college credits of science and/or math courses.

Allow a Federal income tax deduction for education expenses incurred by qualified professionals in math and science who take courses leading to teacher certification.

This approach would attain three goals: It would raise the level of mathematical and scientific literacy among all teachers; encourage experienced math and science teachers to continue teaching those subjects; and recruit math and science teachers from professionals in those fields.

North Carolina some 15 years ago created a high school for mathematics and science, a residential school drawing promising students from across the State. The results have been outstanding. We are creating scientists for the future. The faculty attracted to this kind of school is superb. Leaders from other States have toured this institution with great envy. This bill does not propose to support the creation of such schools across the Nation, but is designed to prompt consideration of such action by providing one-third of a modest planning grant for States with an interest in such a school.

Mr. President, given the shortage of direct Federal funding for education programs, I believe our bill represents an innovative and effective new way to protect our future. I urge my colleagues to consider and cosponsor our bill.

By Mr. BINGAMAN (for himself and Mr. DOMENICI):

S. 1837. A bill to direct the Secretary of the Interior to establish a Desert Research Center; to the Committee on Energy and Natural Resources.

DESERT RESEARCH CENTER ACT

● Mr. BINGAMAN. Mr. President, I rise today to introduce legislation to establish a desert research center in New Mexico. Desert lands contribute significantly to the biodiversity of the world and are highly susceptible to climatic change. The significant contributions of desert lands to meet the Nation's energy needs, to the production of food and fiber, and their increasing importance as large population centers often go unrecognized. As a nation, we also treasure these lands for their rugged beauty, opportunities for recreation, and diversity of landform and lifeform.

Deserts comprise approximately one-third of the Earth's land area and about 10 percent of the continental United States. These lands produce approximately one-fifth of the world's food, one-half of the supply of precious/semiprecious minerals, plus they contain most of the world's oil and natural gas reserves. An understanding of the interrelationships of land, water, climate, vegetation, wildlife, and people is critical to the long term conservation and management of desert lands worldwide.

Historically, the settlement pattern of the United States proceeded from the humid regions of the east and south to the arid and semiarid regions of the west. Although rainfall decreased and ecological capabilities changed in the west, land use patterns and attitudes often did not.

A large proportion of the western lands of this Nation have remained in Federal ownership with mandates for balanced and biologically sound resource management. The demands on these desert lands are ever increasing: production of energy, food, fiber, water, living space, disposal sites for waste generated in other areas, recreation opportunities, wilderness—the list is long. It is important that we devise management solutions to resource problems in the arid desert lands of the west that are based on the ecological capabilities of those systems.

A preponderance of the Nation's desert lands are in public ownership, and the Bureau of Land Management is responsible for managing more of this acreage than any other Federal agency. The Bureau has a clear mandate to manage its public land resources in a wise and responsible manner. Increasing pressure on the resources of public desert lands because of economic changes and population growth make it imperative to provide more efficient management of these resources. These pressures, in light of the Bureau's responsibility to maintain healthy, diverse ecosystems presents difficult and challenging problems to resource managers.

Desert lands administered by the Bureau of Land Management provide a unique opportunity to study and develop management solutions. We must continue to search for long term, ecologically sound ways to meet these demands in light of growing understanding of the interdependence of all life on the planet and the global implications of human activities as evidenced by issues such as global climate change and diminishment of the ozone layer.

New Mexico is famous for the quiet beauty of its deserts. Three of the four major desert ecosystems of the western United States occur within my State, which makes it an ideal location from which to study the effects of human use and resource management strategies for desert lands. The Bureau of Land Management in New Mexico is poised to lead this effort as

manager of the majority of New Mexico's diverse desert systems. I anticipate that the desert research center will be located in southern New Mexico, possibly in Dona Ana County.

The desert research center will serve as a focal point for national and international research on desert ecosystems and their management. Research projects will address topics in desert ecology such as the evaluation of desert resources, assessment of trends and changes in physical and biological components of those systems, and recovery of threatened and endangered species. Federal lands in the west may be key to the conservation of populations of all kinds of organisms if predicted global warming trends actually occur by providing habitat diversity and space for daily movement and seasonal migration not permitted by extensive urbanization and agricultural development. Desert management research may examine sustainable agricultural practices, erosion control, water quality and water use efficiency, reclamation of desert lands, and other topics related to energy development, and applications of remote sensing and geographic information systems. Such applications would include development of predictive modeling for land use planning and implementation of resource management studies and decisions; change detection; and monitoring of species diversity and unauthorized activities. Many of these studies are pertinent to international environmental issues such as global climate change, desertification, and biodiversity.

A second major role of the desert research center would be production of educational and interpretive materials for use by school age children, college students, visitors to desert lands, and researchers. Research in to applied management issues of Federal land management agencies would provide national benefits and would also have applications of international importance, as many developing nations are under pressure from industrialized nations to proceed with national growth and development in an environmentally sound manner. The current problems of Ethiopia and Sudan are graphic examples of pressures on desert ecosystems. As a world leader in helping less developed nations and as a member of the world community with great interest in the ecological future of the planet, it is our responsibility to help devise solutions to resource management problems that we can share with other nations, that they may benefit from our experience and provide for the long term health of their own resources.

In this light, this bill provides for a specific international linkage. As New Mexico and Mexico have similar Chihuahuan desert environments and resource management issues, the research to be conducted at the Center will be of value to both nations. Therefore a committee, comprised of representatives from the United States and Mexico, is to be established to enhance international cooperation and exchange of information. The committee will serve in an advisory capacity to the desert research center reviewing priorities and projects, providing liasion between the two countries and facilitating technology transfer.

During the first year of operation, the desert research center would focus on detailed planning, including identification of specific research projects which would be undertaken immediately to address the most pressing resource and management issues. Also cooperative agreements would be developed with other agencies and institutions that have an interest in desert research.

It is critical that we devise management solutions to resource problems in arid desert lands that are based on the ecological capabilities of those systems. This is an exciting proposal which will advance our knowledge of desert environments and how they are best managed in the long term. I urge my colleagues to join me in supporting this legislation of national and international significance.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1837

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Desert Research Center Act of 1989".

SEC. 2. FINDINGS.

The Congress finds that—

(1) deserts comprise about one-third of the earth's land area and 10 percent of the land area of the continental United States;

(2) desert lands contribute significantly to the biological diversity of the world;

(3) desert lands are important for their unique and diverse flora and fauna, beautiful landscapes, recreation opportunities, natural resources and agricultural uses;

(4) desert lands must be studied, monitored, and protected because once they are damaged, the impact of human activities is often irreparable for many generations;

(5) it is necessary to understand the complex interrelationships of desert resources to ensure appropriate conservation and management of desert lands for present and future generations;

(6) the federally managed desert lands of New Mexico constitute an ideal setting in which to conduct studies of the ecology, environment, natural history, and management of desert resources because—

(A) 3 of the major deserts of the western United States are situated in New Mexico; and

(B) there would be wide applicability of such studies to other states and nations;

(7) desert researchers could use a research center as an operational base for the study of deserts in other regions and a repository for storage of data on desert ecology and management;

(8) New Mexico and Mexico share the unique Chihuahua Desert; and

(9) the understanding of natural processes, such as decertification, that would be gained from research efforts in the deserts of New Mexico could be applied to problems that other areas of the world are currently experiencing and that may become serious problems if they are not handled appropriately, especially in the southwestern United States and in Mexico.

SEC. 3. DESERT RESEARCH CENTER.

(a) ESTABLISHMENT.—The Secretary of the Interior, acting through the State Director of New Mexico of the Bureau of Land Management, shall establish and administer a Desert Research Center (referred to as the "Center") in New Mexico for research on desert lands and their management.

(b) FUNCTIONS.—(1) The Center shall—

(A) serve as a clearinghouse for the collection, analysis, and dissemination of research material related to desert lands managed by the Bureau of Land Management;

(B) produce educational and interpretive materials necessary to public understanding of desert ecology, desert management, and local, national and global environmental issues;

(C) assist students and researchers as an educational laboratory; and

(D) provide for a comprehensive evaluation of desert resources, protection needs, and efficient and environmentally sound long-term management strategies for desert resources.

(2) Research at the Center shall be directed primarily toward desert lands managed by the Bureau of Land Management, but the Secretary of the Interior may enter into cooperative agreements with other agencies or entities as appropriate to carry out the purposes of this Act.

SEC. 4. OPERATIONAL PLAN.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary of the Interior shall transmit to Congress an operational plan for the Center.

(b) PLAN CONTENTS.—The plan described in subsection (a) snall include—

(1) a research plan;

(2) an assessment of staffing needs for the first 5 years of operation of the Center;

(3) proposed cooperative agreements with other agencies and institutions pursuant to existing authorities;

(4) an assessment of facility needs for the Center; and

(5) an analysis of operational costs, including cost of staffing for 5 years, cost of facilities, and other items.

SEC. 5. ADVISORY COMMITTEE.

(a) IN GENERAL.—The Secretary of the Interior shall form a Desert Research Center Advisory Committee (hereafter referred to as the "Advisory Committee") to advise the Desert Research Center and the Bureau of Land Management on desert land research and management.

(b) MEMBERSHIP.—(1) The Secretary of the Interior shall appoint members of the Advisory Committee whom the Secretary believes will be able to contribute to the work of the Advisory Committee by virtue of training or experience in disciplines relating to the management of desert resources.

(2) The Secretary of the Interior shall ensure that a majority of the Advisory Committee members are from the United States.

(3) The Secretary of the Interior shall invite the government of Mexico to appoint members of the Advisory Committee.

(c) FUNCTIONS.—The Advisory Committee shall advise the Desert Research Center with respect to such matters as—

(1) the setting of priorities for desert research;

(2) the coordination of desert research efforts in the United States, Mexico, and other countries by government agencies, universities, and private organizations; and

(3) the practical application of knowledge gained in desert research.

(d) COMPENSATION.—Members shall serve on the Advisory Committee without compensation.

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.●

By Mr. INOUYE (for himself and Mr. HOLLINGS):

S. 1839. A bill to provide authorization of appropriations for activities of the National Telecommunications and Information Administration, and for other purposes; to the Committee on Commerce, Science, and Transportation.

NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION AUTHORIZATION ACT

● Mr. INOUYE. Mr. President, today I am introducing a bill to authorize appropriations for the National Telecommunications and Information Administration [NTIA] of the Department of Commerce for fiscal years 1990 and 1991.

The bill authorizes $14,554,000 for NTIA for fiscal year 1990 and $15,000,000 for fiscal year 1991, and allows for necessary nondiscretionary cost increases. The amount for 1990 is identical to the amount contained in the President's fiscal year 1990 budget request. These amounts represent slight increases from the $13.8 million appropriated to NTIA in fiscal year 1989. These increases are primarily intended to cover certain nondiscretionary cost hikes.

NTIA serves as the principal adviser to the executive branch on domestic and foreign telecommunications issues, develops plans and policies for submission before various regulatory bodies, manages the Federal use of the radio frequency spectrum, and conducts a variety of research activities.

The Nation faces a number of important telecommunications issues as we head into the 21st century. How are we going to take full advantage of the new mobile communications technologies that are coming on the scene? How are we going to improve the Nation's telecommunications trade deficit of over $2.5 billion per year? How are we going to ensure adequate media diversity in the face of increasing concentration in the media industry? And how are we going to coordinate the U.S. Government responses to these questions to ensure that the U.S. agencies are working with, and not against, each other?

NTIA needs to play an active role in developing answers to all these questions. NTIA's unique position as an unbiased spokesperson on telecommunications matters gives it a great deal of influence over these questions. It has the opportunity to play a leadership role in resolving policy disputes and pushing our regulatory agencies toward more long-term solutions to these issues. I believe that the new head of NTIA, Ms. Janice Obuchowski, brings to the agency a breadth of experience and good sense that bodes well for our future. I expect her to take full advantage of this opportunity.

In these circumstances, congressional oversight over the activities of NTIA is especially important. The time has come to renew our interest in and oversight of this important Government agency. The bill I am introducing today recognizes NTIA's increasingly important role and also provides the Congress with a mechanism for continuing our oversight over the long-term development of our Nation's telecommunications policy.

Mr. President, the NTIA authorization bill also contains language to reauthorize funding for the Pan-Pacific Educational and Cultural Experiments by Satellite Program. This program, commonly known as PEACESAT, provided essential telecommunications services to the inhabitants of several rural Pacific Islands for over 14 years.

The program allowed for the exchange of medical information—which helped to stem an outbreak of cholera a few years ago—provided educational programming for schoolchildren, and permitted the exchange of information about cultural events and traditions among the communities. Because of their low level of economic activity and limited infrastructure, PEACESAT often provided the inhabitants of these communities with their only contact with the rest of the world.

The PEACESAT Program also generated substantial goodwill toward the United States. This area of the world is becoming increasingly important to United States strategic interests, especially given the activities of Japan and the Soviet Union in the region.

In 1985, the satellite used to carry the PEACESAT Programs ran out of fuel and was decommissioned. Since then, Congress has been actively searching for means of reestablishing the PEACESAT network. In 1985, Congress authorized NASA to conduct a study of alternative satellites that could be used to continue the service. In the last Congress, we authorized $1.7 million for each of the fiscal years 1988 and 1989 to NTIA to acquire the necessary satellite facilities to reestablish the program. Although only about one-half of that amount has been appropriated, NTIA has made significant progress toward reestablishing the PEACESAT network. NTIA expects that the system will begin operations again over an old GOES satellite, acquired from the National Oceanographic and Atmospheric Administration, in the summer of 1990.

The bill I am introducing today authorizes $1 million in funding for fiscal year 1990 and such additional sums as may be necessary for fiscal year 1991 for PEACESAT. I believe that the $1 million for fiscal year 1990 is necessary to ensure that the program becomes operational next year and that the Earth terminals are properly installed. Funding for fiscal year 1991 may be necessary to begin the process of acquiring additional satellite capacity once the GOES satellite runs out of fuel in 1995. For this reason, the bill simply authorizes such funds as NTIA may require to begin this process. I would like to emphasize that, except for the acquisition of replacement satellite capacity, it is anticipated that the PEACESAT Program will not need additional Federal funding once the GOES satellite and the new Earth terminals have been acquired and installed.

I believe that both NTIA and the PEACESAT Programs deserve continued scrutiny and support by the Congress. I urge all my colleagues to join me in supporting this bill.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1839

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there is authorized to be appropriated for activities of the National Telecommunications and Information Administration $14,554,000 for fiscal year 1990 and $15,000,000 for fiscal year 1991, together with such sums as may be necessary for increases resulting from adjustments in salary, pay, retirement, other employee benefits required by law, and other nondiscretionary costs, for each of the fiscal years 1990 and 1991.

SEC. 2. (a) The Congress finds that—

(1) the Pacific Ocean region is of strategic and economic importance to the United States;

(2) other nations, especially the Soviet Union and Japan, are seeking to increase their influence in this region;

(3) because the Pacific Basin communities are geographically isolated and because many are relatively poor, they are in great need of quality, low-cost communications services to maintain contact among themselves and with other countries;

(4) from 1971 until 1985, such communications needs were satisfied by the Pan-Pacific Educational and Cultural Experiments by Satellite Program (hereinafter referred to as the "PEACESAT Program") operating over the ATS-1 satellite of the National Aeronautics and Space Administration;

(5) the ATS-1 satellite ran out of station-keeping fuel in 1985 and has provided only intermittent service since then;

(6) the Act entitled "An Act to provide authorization of appropriations for activities of the National Telecommunications and Information Administration", approved November 3, 1988 (Public Law 100-584; 102 Stat. 2970), authorized $3,400,000 in funding during fiscal years 1988 and 1989 for re-establishing the communications network of the PEACESAT Program;

(7) Congress appropriated $1,700,000 for fiscal year 1988 and $200,000 for fiscal year 1989 for the purposes of re-establishing the communications network of the PEACESAT Program;

(8) since 1988, significant progress has been made to ensure resumption of this vital communications service by repairing earth terminals in the Pacific communities, by identifying the short-term and long-term needs of the residents of these communities, and by negotiating to acquire the use of the GOES-3 satellite owned by the National Oceanic and Atmospheric Administration, which is expected to provide service from 1990 to 1994;

(9) the National Telecommunications and Information Administration will issue a contract for the design and construction of earth terminals to work with the GOES-3 satellite by early 1990 that will exhaust the funds previously appropriated;

(10) additional funding will be necessary for fiscal years 1990 and 1991 to pay for the costs of operating the GOES-3 satellite, for installing the earth stations and training engineers to operate them, and for administering the program; and

(11) additional but undetermined funding may also be necessary in fiscal year 1991 to begin acquiring replacement satellite capacity for the GOES-3 satellite after it goes out of service.

(b) It is the purpose of this section to assist in the acquisition of satellite communications services until viable alternatives are available and to provide interim funding in order that the PEACESAT Program may again serve the educational, medical, and cultural needs of the Pacific Basin communities.

(c)(1) The Secretary of Commerce shall expeditiously negotiate for and acquire satellite space segment capacity and related ground segment equipment to provide communications services for former users of the ATS-1 satellite of the National Aeronautics and Space Administration.

(2) (A) The Secretary of Commerce shall provide to the manager of the PEACESAT Program such funds, from appropriations authorized under subsection (d) of this section, as the Secretary considers necessary to manage the operation of the satellite communications services provided with the capacity and equipment acquired under this subsection.

(B) The recipient of funds under subparagraph (A) of this paragraph shall keep such records as may reasonably be necessary to enable the Secretary of Commerce to conduct an effective audit of such funds.

(C) The Secretary of Commerce and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of such recipient that are pertinent to the funds received under subparagraph (A) of this paragraph.

(d) There are authorized to be appropriated $1,000,000 for fiscal year 1990 and such sums as may be necessary for fiscal year 1991 for use by the Secretary of Commerce in the negotiation for and acquisition of capacity and equipment under subsection (c)(1) of this section and the management of the operation of satellite communications services under subsection (c)(2) of this section. Sums appropriated pursuant to this subsection may be used by the Secretary of Commerce to cover administrative costs associated with the provisions of this section.

(e) The Secretary of Commerce shall consult with appropriate departments and agencies of the Federal Government, representatives of the PEACESAT Program, and other affected parties regarding the development of a long-term solution to the communications needs of the Pacific Ocean region. Within one year after the date of enactment of this Act, the Secretary of Commerce shall report to the Congress regarding such consultation.●

By Mr. RIEGLE (for himself, Mr. GARN, Mr. CRANSTON, and Mr. D'AMATO) (by request):

S. 1840. A bill to amend provisions of the Bankruptcy Code governing the powers of a bankruptcy court and the effect of automatic stays as they relate to certain multifamily liens insured or held by the Secretary of Housing and Urban Development or the Secretary of Agriculture, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

EXEMPTION OF CERTAIN LOANS FROM PROVISIONS OF THE BANKRUPTCY CODE

● Mr. RIEGLE. Mr. President, I am today introducing a bill to exempt certain multifamily loan foreclosures and related actions from the Bankruptcy Code. I ask unanimous consent that a section-by-section explanation and justification be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SECTION-BY-SECTION EXPLANATION AND JUSTIFICATION

EXEMPTION OF HUD AND FMHA MULTIFAMILY LOAN FORECLOSURES AND RELATED ACTIONS FROM THE BANKRUPTCY CODE

This bill would amend sections 105 and 362 of the Bankruptcy Code (title 11 of the United States Code, as recodified by the Bankruptcy Reform Act of 1978 (Pub. L. 95-598; 92 Stat. 2549)). The changes to section 362 would exempt from the automatic stay provisions of the Bankruptcy Code those acts taken by the Secretary of HUD or Agriculture toward foreclosure (including acts to obtain possession or for the appointment of a receiver) on multifamily projects with liens that are insured or held by the Secretary of Housing and Urban Development, or by the Secretary of Agriculture pursuant to title V of the Housing Act of 1949. Other acts to protect the financial position or interest of the Secretaries in bankruptcy situations relating to these projects would also be excluded from the automatic stay where a right (for example, to offset funding otherwise due to a debtor) is provided for under contract, regulatory agreement, regulation, or statute. The amendments to section 105 would make clear that the acts covered by these changes to section 362 are not subject to a bankruptcy court's discretion to issue stay orders.

This proposal requests restoration of the HUD position under sections 663 and 917 of the old title 11 (repealed in 1978), which provided relief from the automatic stay for multifamily projects insured under the National Housing Act. In addition to this restoration, the proposal would accord relief from the automatic stay for projects under the section 312 rehabilitation loan multifamily program; for land development projects under title X of the National Housing Act, as it existed immediately before the effective date of the "Department of Housing and Urban Development Reform Act of 1989" (since the 1989 Reform Act would repeal title X); for multifamily projects under section 202 of the Housing Act of 1959; for hospitals and nursing homes under sections 242 and 232, respectively, of the National Housing Act; and for any other projects with mortgages held or insured by HUD under existing or now-dormant programs. It would also accord such relief for the Secretary of Agriculture under the multifamily program of the Farmers Home Administration (FmHA) in the Department of Agriculture.

Section 362(a) of the current Bankruptcy Code states the general rule that once a bankruptcy petition has been filed, there is an automatic stay imposed on the commencement or continuation of judicial, administrative, or other proceedings against a debtor. Section 326(b)(8) provides a narrow exception to the automatic stay rule, permitting the Secretary of HUD to commence foreclosure on a mortgage or deed of trust which is insured or was formerly insured under the National Housing Act, is held by the Secretary, and covers property or a combination of property consisting of five or more living units. The section 362(b)(8) exception, however, is considerably more restrictive than the analogous provision under the old Bankruptcy Act, and is too narrow to be fully effective in the protection of the FHA insurance fund and the tenants of HUD-insured or—assisted multifamily housing projects from the potentially adverse impact of mortgagor bankruptcies. An expansion in the terms of the exception would be desirable for the following reasons.

The great majority of mortgagor-participants in HUD-insured or HUD-assisted multifamily housing projects are limited partnerships formed for the purpose of providing investor tax shelters. Defaults on mortgage obligations frequently reflect the financial incapacity of the mortgagor properly to manage and maintain the insured property. Defaults often lead to foreclosure. If the mortgagor declares bankruptcy, however, this will delay the foreclosure. Once in bankruptcy, the delinquent mortgagor has the positive tax advantage of continuing to take depreciation deductions, as well as other permissible deductions under the accrual method, without making morgage payments. Under current law, HUD can commence foreclosure proceedings, but cannot prosecute them further. Moreover, in such situations, HUD may be stayed from protecting the Federal financial interests by taking such actions as off-setting with funds otherwise due a debtor. Prosecution of a foreclosure and other actions are thus delayed by the bankruptcy, to the detriment of the Federal government's financial interests and to the potential disadvantage of tenants—many of them low- and moderate-income persons—stemming from the physical deterioration of the affected projects.

To remedy this situation, the proposal would expand the existing exception to the

automatic stay provisions in two respects. First, since the existing exception applies only to the commencement of a foreclosure action, the automatic stay still applies to any other step in the prosecution of a foreclosure, once commenced, and owners and their investors continue to enjoy the tax advantages until the automatic stay is lifted and the government's foreclosure action is completed. Therefore, the proposal would permit prosecution of further steps, through the completion of foreclosure.

Second, because only the commencement of foreclosure actions is now exempt from the automatic stay provisions, actions to obtain possession as a mortgagee in possession or for the appointment of a receiver, or otherwise to protect the Federal financial interest, cannot be pursued. Pending a determination of whether foreclosure is necessary, it is highly desirable for the HUD Secretary to have these options, both for the protection of the FHA insurance funds and to protect tenants by assuring continued, satisfactory management and operation of multifamily housing projects in default. In this regard, the longer a property is tied up in bankruptcy, the more physical deterioration is likely and the greater is the need for intermediate remedies, such as receivership. Moreover, the longer the bankruptcy proceedings last, the more sharply reduced the proceeds of sale are likely to be, when finally permitted after foreclosure. (This problem is particularly serious for properties with section 312 rehabilitation loans, since these loans typically have a junior position among the liens on the property.)

In addition, the proposal would amend section 105 of the Bankruptcy Code, to prevent a bankruptcy court from invoking its other discretionary powers in a way that would frustrate the purposes of expanding the exemption from section 362's automatic stay. The central concern is that unless section 105 is amended, section 362(b)(8) (even as amended under the proposal) would not necessarily protect the Secretaries of HUD and Agriculture, since a bankruptcy court could make injunctive or other equitable relief available to mortgagors in the exercise of its discretion under section 105. The benefits of the proposed exception to the automatic stay in section 362(b)(8) could thus be negated, if the bankruptcy court is free to exercise its power under section 105. Accordingly, the amendment to section 105 would prevent imposition of a discretionary stay on HUD and Agriculture in situations where, under the amendments proposed to section 362(b)(8), an automatic stay may not be imposed.

As noted above, this proposal would also expand the current exception in a further respect—by extending the coverage that would be afforded to HUD's National Housing Act multifamily programs to hospital and nursing home programs under sections 242 and 232, respectively, of the National Housing Act; to Land Development programs under title X of the National Housing Act (as it existed immediately before the effective date of the Department of Housing and Urban Development Reform Act of 1989); to the section 312 multifamily Rehabilitation Loan program; to projects under section 202 of the Housing Act of 1959; and to any other projects with mortgages held or insured by HUD under existing or now-dormant programs; and to the Department of Agriculture's multifamily rural housing program. Thus, for these additional programs as well, the proposed amendments would ensure that the Secretaries of HUD and Agriculture have adequate and timely recourse against defaulting mortgagors, and would permit acts short of foreclosure (such as the Secretary of HUD or the Secretary of Agriculture taking possession or seeking appointment of a receiver). There seems to be no relevant basis upon which these additional programs should be distinguished from the National Housing Act multifamily programs for Bankruptcy Code purposes.

One technical item deserves mention. Under existing section 105, a bankruptcy court may not appoint a receiver, and that prohibition is carried into the proposed revision. Nonetheless, the proposal would permit the Secretary of HUD or Agriculture to appoint a receiver for the specific property involved. These provisions are not contradictory because of differences in who may appoint the receiver and the jurisdiction that the receiver may have, i.e., supervision of an affected property versus the estate of a bankrupt.●

By Mr. RIEGLE (for himself, Mr. GARN, Mr. CRANSTON, and Mr. D'AMATO) (by request):

S. 1841. A bill to amend Federal laws to reform housing, community and neighborhood development, and related programs, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT REFORM ACT

Mr. RIEGLE. Mr. President, I am today introducing the Department of Housing and Urban Development Reform Act of 1989. I ask unanimous consent that a section-by-section explanation and justification be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows.

SECTION-BY-SECTION EXPLANATION AND JUSTIFICATION FOR THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT REFORM ACT OF 1989

TITLE I—ETHICS

ALLOCATION OF HOUSING ASSISTANCE

Section 213(d) of the Housing and Community Development Act of 1974 requires the Department to allocate assistance under certain housing assistance programs on the basis of a needs-based formula—the so-called fair share formula. The active programs that are subject to this requirement include the section 8 Housing Assistance Payments programs, the section 202 Elderly and Handicapped Housing Loan program, and the public and Indian housing development program. Excluded from the formula's coverage are public housing operating assistance, Comprehensive Improvement Assistance, and grants under the Rental Rehabilitation program.

Under current practice, new assistance subject to "fair share" is generally allocated by the formula to the Field or Regional Office level; awards are then made to specific recipients on a purely discretionary or competitive basis. Discretionary loans and grants are also made for a number of categories in the "Headquarters Reserve"—a funding set-aside of up to 15% of the assistance made available for the programs subject to section 213.

In recent years, some of the programs covered by section 213 have experienced widespread waste and abuse arising from allocation decisions that involved undue political interference and "influence peddling." The most egregious examples involved the section 8 Moderate Rehabilitation program. For a number of years, the Moderate Rehabilitation program was operated without objective selection and other criteria. Another area—the Headquarters Reserve—has never had any regulatory or other publicly articulated funding rules. Without articulated rules, these programs were prime candidates for abuse.

Section 101 of the bill is designed to place the programs subject to section 213 of the 1974 Act of a sound programmatic footing, and to prevent these abuses from occurring in the future. It would state as the governing principle that all public and Indian housing development, and all section 8 and section 202 assistance, would first have to be allocated by the fair share formula and then awarded to the recipient pursuant to a competition. Put another way, no Federal dollar could fund an assisted project, unless that dollar was provided by the fair share formula and competition.

The non-discretionary categories in the Headquarters Reserve would be excepted from this rule. The Headquarters Reserve contains categories such as unforeseeable housing needs arising from natural and other disasters or the settlement of litigation. These categories involve essentially non-discretionary matters, and thus, do not share the vulnerability to abuse that would require their inclusion in the proposal. The treatment of the Headquarters Reserve is discussed more fully in section 104 of this bill.

Any competition to award housing assistance would have to be conducted pursuant to specific criteria for the selection of assistance recipients. The criteria must be contained in either a regulation promulgated by HUD after notice and public comment or to the extent authorized by law, in a notice published in the *Federal Register.*

This approach is designed to provide the Department with clear and articulated guidelines for awarding its housing assistance. In both cases, the guidelines would be made available to the public and the Congress, providing the "sunshine" necessary to ensure a fair process.

The Department intends to develop its selection criteria through notice and comment rule making to the greatest extent possible. The less formal Notice approach would generally be used in special circumstances, such as where the time involved in promulgating a rule would frustrate an important public purpose, where the Congress specifies a non-regulatory funding process (see section 485 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988), or where an existing regulation calls for less formal means of notifying the public of the rules for a funding competition.

The proposal would also require the Secretary to use the fair share formula to make, as determined by the Department, any assistance allocations to the smallest practicable area, consistent with the delivery of assistance through a meaningful competitive process designed to serve areas with greater needs. This part of the proposal recognizes the desirability of using both the fair share formula and competition. Under this language, the Secretary could continue the practice of conducting separate allocations of assistance for sub-programs, such as the section 8 Voucher, the section 202, and the section 8 Certificate programs. Allocations for each such sub-program would,

however, be subject to the requirement that the amounts be allocated by the fair share formula, consistent with delivery of assistance through a competition designed to serve areas with greater needs.

The proposal would attempt to provide funding cycle predictability for the assisted housing programs covered by section 213 of the 1974 Act. Specifically, the Secretary would be required to take appropriate steps to ensure that the allocation of housing assistance subject to section 213 would be made with similar frequency and at similar times for each fiscal year. This is designed to provide funding cycles that the public can rely upon, and to eliminate ad hoc, special-interest funding rounds.

The proposal recognizes that the availability of appropriations is central factor in the timing of funding cycles, and makes the new requirement specifically subject to appropriations-related timing considerations. The proposal would also require the Secretary to meet the new requirement, "to the maximum extent practicable." This recognizes that there may be special considerations that warrant changes in established funding cycles. Examples would include the enactment of Supplemental Appropriations Acts, amounts made available following a rescission message, or greater carryover than anticipated from a prior funding round.

The proposal would also make clear the type of assistance that is subject to the fair share formula. As noted earlier, section 213(d)(1) of the 1974 Act specifically excludes from the formula's coverage public housing operating assistance, Comprehensive Improvement Assistance, and grants under the Rental Rehabilitation program. Roughly two-fifths of the remaining housing assistance that is subject to the "fair share" is needed to provide funding for special purposes that are not capable of geographic targeting. These purposes include amendments of existing contracts; lease adjustments under section 23 of the United States Housing Act of 1937, as in effect before amendment by the 1974 Act; renewal of assistance contracts; assistance to families that would otherwise lose assistance due to the decision of the project owner to prepay the project mortgage or not to renew the assistance contract; assistance to prevent displacement or to provide replacement housing in connection with the demolition or disposition of public and Indian housing; and assistance in support of the property disposition and loan management functions of the Secretary. "Fair sharing" by the conventional, objective fair share formula criteria will not match with these geographically untargeted needs. Moreover, while loan management and property disposition functions are awarded on a needs basis, the process used does not meet traditional modes of competition open for all.

In addition, other assistance approved in appropriation Acts to be provided to target areas with greater needs, subject to competition requirements, would also not be subject to the fair share formula. Authority for the Department to target assistance to areas with greater need will give it flexibility to address otherwise unmet critical needs and priorities through a competition held on a national level. The competition would be subject to the same provisions governing competition for the award of housing assistance as for programs subject to the fair share formula (see proposed section 213(d)(5)(B)).

Finally, the proposal would specify that the provision requiring that between 20% and 25% of amounts be allocated to nonmetropolitan areas would apply only to funds allocated by formula. Contract amendments, renewal of assistance contracts, assistance in support of the property disposition and loan management functions, and the other categories not capable of distribution by formula are largely needed in metropolitan areas. It would significantly distort the allocation process if the 20%/25% requirement were to apply to the total amount of assistance available, since it would inappropriately require a significantly higher percentage of the incremental assistance to be allocated to nonmetropolitan areas.

PUBLIC ANNOUNCEMENT OF HUD FUNDING DECISIONS AND HOUSING ASSISTANCE ALLOCATIONS

Section 102 would require HUD to inform the public of all its funding decisions that involve competition among prospective recipients, as well as all its formula allocations of housing assistance under the so-called fair share formula provisions of section 213(d)(1) of the Housing and Community Development Act of 1974. With regard to the first element of the proposal, "funding decisions" would cover any grants, loans, or other form of financial assistance provided under any HUD program that provides by statute, regulation, or otherwise for the competitive distribution of the assistance.

The notification would include the following items:

The name and address of each funding recipient;

The name or other identifier for the project or activity funded;

The dollar amount awarded to each funding recipient;

The citation to the statutory, regulatory, or other criteria under which the funding decision was made; and

Such additional information as the Secretary deems appropriate for a clear and full understanding of the funding decision.

The notification would be accomplished by publication of a Notice in the *Federal Register* at least quarterly. The "at least" language is intended to permit the Secretary to publish Notices at shorter intervals, for example, where an important funding round occurs shortly after the last publication.

The proposal would also require the Secretary to publish a Notice in the *Federal Register* at least annually informing the public of the allocations of housing assistance under the fair share formula contained in section 213(d)(1) of the Housing and Community Development Act of 1974. The report would cover the entire fair share allocation, to the smallest area for which the formula operates. The annual publication requirement corresponds to the traditional cycle for making "fair share" allocations. The Secretary would be authorized, however, to publish allocations on a more frequent basis, if the Secretary determines that such action is appropriate.

These proposals are designed to ensure that the funding award process that HUD uses for each of its programs and the "fair share" allocation process that it uses for its housing assistance programs are fair and free from improper influence. It accomplishes this end by inviting the public to examine relevant information about those that "win" funding competitions and receive formula allocations of housing assistance.

The "fair share" allocation proposal, when taken together with the funding decision proposal described above and the requirement of section 101 of this Act that housing assistance be awarded to specific recipients by fair share formula and competition, comprises a comprehensive approach to ensuring the fairness of HUD's housing allocations. As noted earlier, the Department typically uses the fair share formula to allocate assistance to a certain level, and then awards assistance on a discretionary basis. Under these proposals, the public would be invited to peruse the entire housing allocation process: the formula allocations as well as the funding decisions reached in the competitive element of the allocations.

PROHIBITION OF ADVANCE DISCLOSURE OF FUNDING DECISIONS

Section 103 would prohibit disclosure of information concerning HUD funding decisions until the decision is final, except for information that is available to the public including program requirements and timing of the decision. Prohibiting the disclosure of this information would eliminate giving any unfair financial advantage derived from such information to any individual or entity with respect to a funding decision under consideration. Any HUD employee or any other employee of the executive branch who releases such information would be subject to a civil money penalty of up to $10,000 for each violation.

This restriction against disclosure of information on funding decisions would apply only to programs administered by the Department that provide, by statute, regulation, or otherwise, for the competitive distribution of financial assistance. The purpose of this section is to assure that individuals and entities outside of the executive branch do not obtain inside information about reviews of competing proposals that would give them an opportunity to attempt to influence the decision. Recent disclosures have indicated that some HUD funding decisions have been politically motivated.

The Inspector General's audit of the Moderate Rehabilitation program revealed that, in one instance, private consultants presented copies of HUD funding documents to officials of a public housing agency (PHA)—normally transmitted directly by HUD to the PHA—and indicated that the funds were theirs (the consultants) to distribute. These documents should not have been in the hands of these private consultants. At the very least, access to these funding notifications provide the developers with an unfair advantage with respect to the PHA's ultimate selections. In fact, the PHA simply selected these developers and ignored the required competitive procurement procedures.

The procedures for imposing a penalty are largely based on those for the civil money penalty authority proposed for FHA lenders and mortgagees. Where the Secretary determines that a penalty should be imposed, the employee would have an opportunity for a hearing by an Administrative Law Judge. (The reference to "Secretary" includes any other department official designated by the Secretary.) After exhausting all administrative remedies, the employee could file an appeal with the appropriate court of appeals of the United States. The Secretary would deposit civil money penalties collected under this section into miscellaneous receipts of the Treasury.

REFORM OF THE HEADQUARTERS RESERVE

Section 104 would make fundamental reforms to section 213(d)(4) of the Housing and Community Development Act of 1974, the so-called "Headquarters Reserve." The Headquarters Reserve has been a source of

significant programmatic waste and abuse. Currently, the Secretary is authorized to retain for use in the Reserve up to 15% of the amounts initially made available in any fiscal year under the United States Housing Act of 1937 and other housing assistance programs. This "set-aside" approach has resulted in significant amounts of funds in search of recipients.

In addition, several of the Reserve's statutory funding categories are excessively broad. The categories contained in sections 213(d)(4)(E) and (F), respectively, are among the worst offenders. They permit Reserve amounts to be used for—

Lower income housing needs described in housing assistance plans, and

Innovative housing programs or alternative methods for meeting lower income housing needs approved by the Secretary.

Finally, in practice, the Reserve has been used as a wholly discretionary funding vehicle. Projects were funded directly from the Central Office without competition and even without governing regulations to govern the selection of recipients.

These three aspects of the Reserve—the "loose" money occasioned by its set-aside structure, the breadth and width of some of its funding categories, and the "fast and loose" way in which amounts from the Reserve were awarded—have resulted in an authority that was ripe for exploitation.

The proposal would address these problems in two ways. First, it would eliminate the troublesome funding categories. Under the proposal, the reserve would only have four categories:

Unforeseen housing needs resulting from natural and other disasters;

Housing needs resulting from the settlement of litigation;

Housing for the support of public housing desegregation efforts carried out by the Secretary; and

Housing needs resulting from emergencies, as certified by the Secretary, other than disasters.

The first two categories are based upon the existing law governing use of the Reserve. The third represents an important use of housing assistance—to further efforts of desegregate public housing. The fourth provides needed flexibility to provide housing assistance to respond to actual emergencies. Each of these categories is directed toward specific, objective events that avoid the "catch-all" categories of the present Reserve.

Second, the proposal would replace the current "set-aside" approach with a requirement that amounts made available for the Reserve be approved in appropriation Acts. This is designed to focus the maximum "sunshine" on the Reserve. The Department would propose, and the Congress would appropriate, amounts for the Reserve. The process would be entirely aboveboard, with the ultimate funding levels understood by all parties: "free" money for broad categories would be replaced by specified amounts for specified purposes.

The proposal would take effect at the beginning of fiscal year 1991—October 1, 1990. This recognizes the fact that the appropriation process—needed to approve amounts under the revamped Reserve—will have been completed for FY 1990 before the proposal would receive congressional consideration.

During FY 1990, the Department intends voluntarily to limit use of the Reserve to those categories that do not involve the kinds of discretion noted above and to activities that have previous funding commitments.

Finally, the proposal would provide for the transition to the revised Reserve.

REFORM OF THE DISCRETION FUND; TECHNICAL ASSISTANCE

Section 105 would amend the so-called "Secretary's Discretionary Fund" under section 107 of the Housing and Community Development Act of 1974 to delete the Secretary's authority to make grants for technical assistance, special projects, and new communities.

The technical assistance and special purpose categories involve highly discretionary grants for excessively broad and undefined purposes. This has made them ready candidates for programmatic waste and abuse. In addition, Congress has frequently assumed the Secretary's "discretion" under these authorities, by earmarking funding for specific activities and projects.

The Department believes that the best way to ensure the integrity of the CDBG program is to eliminate the technical assistance and special projects categories, and to provide for the objective distribution of funds for these categories via the CDBG formula. Block grant recipients would be able to use their grant funds for the types of activities covered by these categories.

The elimination of the new communities category is a technical change. Activity under the various new communities authorities is phasing out, and there is no longer any need for authority to make grants for this purpose under section 107.

No grants could be made for technical assistance or special projects after the date of enactment of this Act, except where the grant was made pursuant to grant award notifications made before that date, or to the Park Central New Community Project from amounts that have already been appropriated for that project. Grants made before the effective date of this Act would continue to be governed by the relevant provisions of section 107 as they existed before that date.

Consistent with the proposed changes, section 107's caption would be changed from the "Discretionary Fund" to "Special Purpose Grants." Section 107 would be retained for grants to Indian Tribes and the Insular Areas, and for the purposes of assisting economically disadvantaged and minority college students participating in community development work-study programs, assisting historically Black colleges, and rectifying CDBG formula miscalculations. These purposes are narrowly drawn enough to avoid the vulnerability to waste and abuse that inheres in the funding categories purposed for elimination.

The proposal would replace the technical assistance category of the Discretionary Fund with a provision permitting the Secretary to set aside up to one-tenth of one percent of the amounts appropriated for any fiscal year for the United States Housing Act of 1937 (other than operating subsidies under section 9 of the Act); section 202(h) of the Housing Act of 1959; the Fair Housing Act; title I of the Housing and Community Development Act of 1974; section 810 of the Housing and Community Development Act of 1974; section 201 of the Housing and Community Development Amendments of 1978; the Congregate Services Act of 1983; section 561 of the Housing and Community Development Act of 1987; title IV of the Stewart B. McKinney Homeless Assistance Act; and counseling under section 106 of the Housing and Urban Development Act of 1968.

The Secretary would be authorized to use amounts set aside for any of these authorities for the purpose of providing technical assistance in connection with that authority. The Secretary could provide the technical assistance directly, or by grants, contracts, or interagency agreement.

This proposal recognizes the legitimate purposes that are served by technical assistance. It would ensure that a small, but constant, source of funds are available for technical assistance. Rather than using the overly broad technical assistance category of the Discretionary Fund, however, the proposal would tie the technical assistance to the authority for which the assistance is to be used. The Department believes that this approach would ensure that appropriate amounts are available for technical assistance, but without the difficulties that have afflicted the current authority in the Discretionary Fund.

The proposal would ensure that technical assistance is made available only under the new authority. This would provide a single source of accountability, and eliminate disparate technical assistance authorities throughout the Department's programs. Specifically, the proposal would provide that on and after the effective date of the Department of Housing and Urban Development Reform Act of 1989, no technical assistance could be made available under any of the covered authorities other than pursuant to the proposal, except pursuant to funds appropriated for technical assistance before such date.

Finally, to ensure that all amounts set aside are used expeditiously, the proposal would provide that any amount set aside that remain available for obligation at the end of the fiscal year after the fiscal year for which they were appropriated would be rescinded.

WAIVER OF HUD REGULATION REQUIREMENTS AND HANDBOOK PROVISIONS

Section 106 would add a new section 7(t) to the Department of Housing and Urban Development Act governing waivers of regulations and handbooks of the Department.

Waivers provide essential flexibility in the administration of the Department's programs. In an ideal world, regulations and handbooks of an Executive Branch agency would anticipate all situations and provide enough flexibility so waivers would never be needed. As a practical matter, there are times when it is necessary to waive a generally applicable requirement. For example, unique site features, unusual local zoning laws, or urgent need for low- and moderate-income assistance could require that HUD approve a waiver of its administrative, nonstatutory requirements in order to approve a high-quality project. However, in recent months, a number of circumstances have come to light indicating the need to assure that waivers are not approved on the basis of favoritism. Problems can occur, for example, when waiver authority is abused to assist luxury projects whose excessive costs endanger the project and the FHA insurance fund.

In particular, this section would require that approval of a regulation waiver be in writing and specify the grounds for approval. To assure that regulations are waived in limited circumstances, they would have to be approved personally by the Secretary or by the Assistant Secretary or individual of equivalent rank (including the General Counsel and the President of the Government National Mortgage Association) who is

authorized to issue the regulation to be waived.

Section 7(s) would also require the Department to publish a list of all approved regulation waivers as a Notice in the *Federal Register* on a quarterly basis. Each notification would (a) identify the project, activity, or undertaking; (b) describe the regulation to be waived; (c) identify the official approving the waiver; (d) briefly describe the grounds for approval; and (e) state how more information about the waiver and a copy of the approval may be obtained. Making regulation waiver approvals public should eliminate situations where waivers are approved for political purposes. The Department intends that waivers should be approved only where they are in the public interest or necessary to prevent undue hardship, and then only where they are consistent with the objectives of the program and the Secretary. By requiring public announcement of regulation waivers, the Department will assure that only waivers that can withstand public scrutiny under this "sunshine" initiative will be approved.

Waivers of HUD handbook provisions would also have to be in writing and specify the grounds for approving the waiver. Handbooks waivers would be maintained at the Department for at least three years, indexed, and made available for public inspection.

AUTHORITY FOR THE SECRETARY TO IMPOSE CIVIL MONEY PENALTIES ON MORTGAGEES AND LENDERS

Section 107 would amend the National Housing Act by adding a new section 536 to authorize the Mortgagee Review Board to impose civil money penalties on HUD-approved mortgagees and title I lenders for specified violation of FHA program requirements, including: (1) transfer of a mortgage to a mortgagee not approved by HUD; (2) transfer of a title I loan to a lender that does not have a valid insurance contract with the Department; (3) failure to properly segregate or deposit escrow funds or use of these funds for a purpose other than that for which they were received; (4) submission of false information, or falsely certifying, to HUD; and (5) knowingly hiring an individual suspended or debarred from HUD programs. The penalty under this proposal would be $5,000 per violation, with a $1 million cap per violator for any related series of violations occurring during any one-year period. In the case of a continuing violation, each day would constitute a separate violation. There would be an opportunity for a hearing before an Administrative Law Judge, and judicial review of the Department's decision.

This amendment would permit the Secretary to more effectively deter fraud and other violations by mortgagees and lenders, thus strengthening the sanctioning process. The possibility of civil money penalties should also help expedite execution of settlement agreements.

This proposal is similar to other proposals in the bill which would authorize the imposition of civil money penalties against developers who violate the Interstate Land Sales Full Disclosure Act; against section 202 and FHA multifamily program mortgagors; and against issuers of GNMA guaranteed mortgage-backed securities and GNMA custodians.

Mortgagee Review Board

This proposal would authorize the Secretary or an administrative entity, such as the Mortgagee Review Board, to make the determination to impose the civil money penalty. (The reference to "Secretary" includes another department official.) in 1975, HUD established the Mortgagee Review Board (the Board) to act for the Secretary in determining whether to withdraw approval from mortgagees to originate mortgages because they violated certain National Housing Act requirements. See 24 CFR Part 25. From time to time, HUD has changed the structure and authority of the Board. At present, the Board has the power to take a range of administrative actions against both mortgagees and lenders. Where the Board finds that the requirements of any of the programs administered under the Act have been violated, it may: issue a letter of reprimand; place the mortgagee or lender on probation; issue an order temporarily suspending a mortgagee's or lender's approval; issue an order withdrawing HUD's approval of a mortgagee or title I lender to enter into a contract of insurance; or approve the initiation of a suspension or debarment action. The Board also may enter into settlement agreements with mortgagees and lenders to resolve any outstanding grounds for administrative action. These agreements may provide for monetary reimbursement to HUD for claim losses on improperly originated mortgages or title I loans that pose a risk to the FHA insurance funds. In the case of a probation, suspension, or withdrawal action, the mortgagee or lender may request a hearing before an independent hearing officer to challenge the action, and, after the hearing, any party may request review by petitioning the Secretary. In accordance with 5 U.S.C. secs. 701-706 (1988), mortgagees and lenders may secure judicial review in a United States court after they have exhausted their administrative remedies.

Background

In the past two decades, the civil money penalty has assumed a place of paramount importance in the compliance arsenal of Federal regulations. In fact, a consultant to the Informal Action Committee of the Administrative Conference of the United States wrote in 1979, "it is today almost inconceivable that Congress would authorize a major administrative regulatory program without empowering the enforcing agency to impose civil monetary penalities as a sanction." Diver, *The Assessment and Mitigation of Civil Money Penalties by Federal Administrative Agencies,* 79 Colum. L. Rev. 1435, at 1436 (1979).

This article pointed out that in 1979 there were 348 statutory civil penalties, enforced by 27 Federal departments and independent agencies, authorized for the enforcement of a host of regulatory commands. Civil money penalties may be invoked for violating statutes, administrative regulations, or administrative orders; for failure to file reports, keep records, permit entry, or respond to agency inquiries; or for willful, negligent, repeated, or even unintended conduct. *Id.* at 1438.

This proposal is based on a 1972 recommendation of the Administrative Conference of the United States, *Civil Money Penalties as a Sanction,* 1 CFR 305.72-6, that agencies consider the use of civil money penalties to supplement other civil and criminal sanctions and that, in appropriate situations, civil money penalties be imposed as part of administrative proceedings. The Conference further recommended that agencies' determinations be subject to review if not supported by substantial evidence, but not to trial *de novo* or collateral attack in a collection proceeding. This was reaffirmed by the Conference in 1979 in *Agency Assessment and Mitigation of Civil Money Penalties,* 1 CFR 305.79-3, and remains the position of the Conference to date. This amendment follows the format of the sample statute recommended by the Administrative Conference, with variations. This is in line with the Conference's recommendation that the sample statute serve as a point of departure for individual agencies' own legislation.

Need for the Amendment

Gaps in existing legislation, primarily the Program Fraud Civil Remedies Act (PFCRA) and the False Claims Act, necessitate this amendment. No penalty can be secured under the PFCRA unless there is a false statement, in the form of a certification, or a false claim. The False Claims Act also requires a false claim. In many of HUD's mortgagee/title I lender cases, however, certified false statements and false claims have not been involved. For example, one of HUD's critical loan underwriting requirements is a face-to-face meeting between the borrower and a lender representative. In many fraudulent schemes, this requirement is violated, as is the case when a straw buyer is used. The mortgagee cannot be said to have made a false claim or false statement since it does not know that a straw buyer has been used. HUD's only current remedy in such situations is to threaten, or seek to secure, sanctions against the mortgagee, up to and including withdrawal of FHA approval. The mortgagee, however, has been able to defeat such threats by terminating the individual involved or transferring ownership of the company, without suffering any financial loss itself. Thus, HUD currently cannot impose monetary penalties for violations of its regulations although such violations may be critical to causing ultimate default and loss to HUD.

Furthermore, even where there is a false statement in the form of a certification with regard to a particular loan, there would only be one $5,000 penalty under the PFCRA (although a double damages remedy is available in the case of a false claim) because a mortgagee makes only one certification per loan to HUD. It is commonly the case, however, that mortgagees commit multiple violations with regard to a particular loan, and HUD's losses are often considerably above $5,000. For example, HUD estimates that the average loss on a single family property is $17,000. Under the PFCRA, HUD's recovery would be limited to $5,000; under this amendment, HUD would be able to impose a $5,000 penalty for each of the violations and be more apt to recover its actual losses.

Section-by-Section Explanation

Subsection (a)(1) [1] would give the Secretary discretionary authority to impose a civil money penalty against a mortgage or title I lender that violates the requirements set forth in subsection (b). It would make clear that the money penalty would be in addition to other available civil remedies or any available criminal penalties, and may be imposed whether or not other administrative sanctions are imposed.

Subsection (a)(2) would limit the amount of the civil money penalty to $5,000 for each violation, except that the maximum penalty

[1] All references to subsections refer to subsections of the new section 536 of the National Housing Act, except for the reference in the last paragraph, which refers to subsection (b) of this proposed section of the bill.

for all violations committed by a mortgagee or lender during any one-year period could not exceed $1 million. In the case of a continuing violation, each day would constitute a separate violation. These monetary standards are similar to many other civil money penalty provisions. On September 19, 1986, Senator William Cohen placed in the CONGRESSIONAL RECORD a table listing the 200 Federal statutes then on the books authorizing enforcement through the administrative imposition of civil money penalties. These statutes included maximum penalties per violation ranging from $5 to $100,000 (132 Cong. Rec. S13,009-11 (1986)). These 200 statutes differ from the 348 statutes referred to in the 1979 Diver article discussed in the second paragraph of the Background section above as the 348 figure included statutes which require court assessment of penalties as well as those which permit agency assessment.

Subsections (b)(1)(A)-(G) would list the violations (already prohibited by the programs under the National Housing Act) which may warrant the imposition of civil money penalties. These violations were selected from among the numerous violations which the Board may currently sanction. The Department considers these violations to be sufficiently egregious to warrant the imposition of civil money penalties in appropriate circumstances. Subsection (b)(1)(H) would cover violations of other statutory and administrative requirements.

Subsection (b)(1)(A) would provide for the imposition of a civil money penalty when a HUD-approved mortgagee transfers a HUD-insured mortgage to a mortgagee that is not approved by the Secretary, or when a lender transfers a loan to a transferee that is not holding a contract of insurance under title I of the Act, unless the transfer is expressly permitted by statute, regulation, or contract approved by the Secretary. The National Housing Act contemplates that HUD will provide insurance only with regard to mortgagees and lenders that meet the requirements of the Act. When a mortgage or loan is transferred to a mortgagee or lender that does not meet these requirements, the Department's funds are at risk.

Paragraph (1)(B) would provide for the imposition of a civil money penalty when a mortgagee that is not supervised by the appropriate Federal, State, or local agencies (and does not, therefore, qualify as a supervised mortgagee under HUD's regulations (see, for example, 24 CFR 203.3 and 203.4)) fails to segregate all escrow funds received from a mortgagor for ground rents, taxes, assessments, and insurance premiums, or fails to deposit these funds in a special account with a depository institution whose accounts are insured by the Federal Deposit Insurance Corporation through the Bank Insurance Fund for banks and through the Savings Association Insurance Fund for savings associations, or by the National Credit Union Administration. The failure to segregate escrow funds would make accounting for these amounts difficult and could encourage the improper diversion of escrowed amounts or other illegal activity. In any event, both diversion and failure to place escrow funds in insured accounts could result in a mortgagor having to make up for lost amounts, being unable to do so, and defaulting under the mortgage.

Paragraph (1)(C) would permit the imposition of a civil money penalty when a mortgagee or lender uses escrow funds for any purpose other than that for which they were received.

Paragraph (1)(D) would permit the imposition of a civil money penalty where the mortgagee or lender knew, or should have known, that information submitted to the Secretary was false. It is vital that mortgagees and lenders provide accurate information if the Department is to avoid costly insurance claims. In implementing this paragraph, it is the intention of the Department that a mortgagee or lender would be subject to a civil money penalty if any of its employees knew, or should have known, that the information was false.

Paragraph (1)(E) would permit the Secretary to impose a civil money penalty where the mortgagee or lender hires an officer, director, principal, or employee whose duties will involve, directly or indirectly, programs administered by the Secretary, when the mortgagee or lender knew, or should have known, that the person was under suspension or debarment by the Secretary. Penalties could also be enforced where the mortgagee or lender retains in employment an officer, director, principal, or employee who continues to be involved, directly or indirectly, in programs administered by the Secretary, when the mortgagee or lender knew, or should have known, that the person was under suspension or debarment by the Secretary.

Paragraph (1)(F) would permit the Secretary to impose a civil money penalty on a mortgagee or lender that falsely certifies. The Department requires mortgagees and lenders to certify that, to the best of their knowledge, the applicable rules and regulations of the Department have been met. If the certification is false, a costly claim could result. Since mortgagees and lenders may be submitting certifications made by others, such as contractors or suppliers, paragraph (1)(F) would also permit the Secretary to impose a civil money penalty on a mortgagee or lender who knowingly submits a false certification by another person or entity.

Paragraph (1)(G) would permit the Secretary to impose a civil money penalty where the mortgagee or lender fails to comply with an agreement, certification, or condition of approval set forth (A) on, or applicable to, the application of the mortgagee or lender for approval by the Secretary, or (B) on, or applicable to, the notification from the mortgagee or lender to the Secretary that it has established a branch office. The Department's approval is conditioned on commitments by the mortgagee or lender contained on the application or notification. The mortgagee or lender would, for example, agree to submit to such examination of its records and accounts as HUD may require. Failure to comply with this and the other commitments would put the Department's insurance funds at risk.

Paragraph (1)(H) would permit the Secretary to impose a civil money penalty for the violation of any National Housing Act provision of title I, II, or X (as it existed immediately before the effective date of the Department of Housing and Urban Development Reform Act of 1989) or any implementing regulation or mortgagee or title I lender letter that is issued under the National Housing Act. Since it is not possible in legislation to cover every conceivable violation on the part of mortgagees and lenders which may occur in the future, this paragraph would give the Secretary the flexibility to impose civil money penalties for violations of the Act's other program requirements.

Subsection (b)(2) would require the Secretary to inform the Attorney General before taking action to impose a fine for a violation under paragraph (1)(D) or (1)(F).

Subsection (c)(1) would require the Secretary establish standards and procedures governing HUD's imposition of civil money penalties under subsection (a). Under subsection (c)(1)(A), the Secretary would have the discretion to provide for the use of an administrative entity (such as the Mortgagee Review Board) to make the determination to impose a penalty. In accordance with subsection (c)(1)(B), the standards and procedures would provide that the civil money penalty could not be imposed before the mortgagee or lender had an opportunity for a hearing on the record by an Administrative Law Judge. This differs somewhat from the procedure the Board follows with respect to probation, suspension, or withdrawal actions. A probation or suspension action by the Board becomes effective before a hearing, and the Board has discretion to determine that a withdrawal action shall also become effective before a hearing. With regard to any of these three actions, the mortgagee or lender is then entitled to a hearing within 30 days after its request. The discretion to order pre-hearing sanctions is in line with court decisions that appropriate pre-hearing sanctions do not violate due process. The courts have permitted pre-hearing sanctions where the protection of the public justifies it. With regard to the imposition of a civil money penalty, however, there is no overriding public interest which would justify imposition of the sanction before an opportunity for a hearing.

Finally, subsection (c)(1)(C) would authorize HUD to establish standards and procedures providing for review of any determination or order, or interlocutory ruling, arising from a hearing. If no hearing is requested within 15 days of receipt of the notice of opportunity for hearing, the imposition of the penalty would constitute a final and unappealable determination.

If the Secretary reviews the determination or order of the Administrative Law Judge, the Secretary may affirm, modify, or reverse that determination or order. If the Secretary does not review the determination or order of the Administrative Law Judge, the determination or order would be the final determination or order of the Secretary.

In implementing the proposed civil money penalty authority, the Department contemplates using, to the maximum extent possible, the existing administrative sanction and review procedures in 24 CFR Parts 25 (Mortgagee Review Board) and 26 (Proceedings Before a Hearing Officer). Thus, the new authority would be coupled with a well-known, existing procedure that provides for the imposition and review of other administrative sanctions for the same types of violations.

Subsection (c)(2) would set forth the factors to be considered in determining the amount of the civil money penalty. These would consist of the gravity of the offense, any history of prior offenses (including those before enactment of this amendment), the ability of the mortgagee or lender to pay the penalty, injury to the public, benefits received, deterrence of future violations, and such other factors as the Secretary determines in regulations to be appropriate.

Subsection (d) would give mortgagees and lenders the right to judicial review in the U.S. Court of Appeals, as recommended by the Administrative Conference. The court also would have jurisdiction to consider any ancillary issues, such as administrative sanc-

tions, covered by the notice of determination to impose a penalty under subsection (c). Subsection (d) would also make it clear that the reviewing court has the authority to order payment of the civil money penalty. This would avoid the possibility of the court's upholding a determination or order imposing a civil money penalty without ordering payment, which could necessitate additional litigation to secure payment. As is the existing practice with respect to other civil monetary penalties, the findings and determinations of the Secretary in imposing money penalties would not be subject to trial de novo by the reviewing court.

Under subsection (e), the Department could request the Attorney General to institute an action in an appropriate U.S. district court against a mortgagee or lender that fails to pay a civil money penalty after it has become a final and unappealable order. The action would seek a money judgment against the mortgagee or lender, as well as any other relief that may be available. The money judgment could include attorneys' fees and other expenses of the United States in bringing the action. The validity and appropriateness of the final order imposing the civil money penalty would not be subject to review.

Subsection (f) would give the Secretary discretion to compromise, modify, or remit any civil money penalty before or after it has been imposed. Since it is the goal of this proposal to achieve compliance with the requirements of programs administered by the Depatment, subsection (f) would permit the Secretary to enter into settlements which would provide for compliance, including compromise, modification, or return of any civil money penalties.

Subsection (g) would require the Secretary to issue regulations to implement the new authority.

Subsection (h) would provide that the Secretary would deposit the civil money penalties collected under this proposal into miscellaneous receipts of the Treasury.

Section 107(b) would provide that the new authority would only cover mortgagee or lender violations that occur after the effective date of the amendment. In the case of a continuing violation (as determined by HUD), the new authority would apply to any portion of the violation occurring on or after that effective date.

AUTHORITY FOR THE SECRETARY TO IMPOSE CIVIL MONEY PENALTIES ON MULTIFAMILY MORTGAGORS

Section 108(a) would amend the National Housing Act by adding a new section 537 to authorize HUD to impose civil money penalties against mortgagors of property that (1) includes five or more living units and (2) has a mortgage insured, co-insured, or held pursuant to the National Housing Act. The proposal would authorize the imposition of civil money penalties for certain violations of (A) an agreement entered into as a condition of a transfer of physical assets, a flexible subsidy loan, a capital improvement loan, a modification of the mortgage terms, or a work-out agreement; or (B) the regulatory agreement executed by the mortgagor. The penalty for violation of the agreement described in (A) above could not exceed the amount of the loss the Secretary would experience at a foreclosure sale, or a sale after foreclosure. The penalty for violation of the regulatory agreement would be capped at $25,000 for each of the specified violations.

The violations for which civil money penalties may be imposed under section 108 were selected from among the numerous violations which the Department may currently sanction. The Department considers the violations that would be subject to a civil money penalty under this section to be sufficiently egregious to warrant the imposition of a civil money penalty in appropriate circumstances.

While the majority of mortgagors comply with their commitments, the limited sanctions presently available to the Secretary (such as declaring the mortgage in technical default for violations of the regulatory agreement, stopping subsidy payments, or foreclosing on the mortgage) have not been preventing a minority of recalcitrant mortgagors from disregarding their contractual obligations. These sanctions have a more adverse effect on the Department and the tenants than on the mortgagor. The results of the Department's declaration that a mortgage is in default are that: the Department discontinues subsidy payments, the mortgagee assigns the mortgage to the Department, the Department pays off the insurance claim, and the Department forecloses on the property at a loss. Due to these events, the project deteriorates physically and financially, with the consequent reduction in services to tenants. To avoid this, it is imperative that the Secretary have the ability to impose sanctions which are commensurate with the harm done by a recalcitrant mortgagor and which would deter mortgagors from disregarding their contractual obligations.

This amendment is similar to other civil money penalty proposals in this bill.

Need for the Legislation

Civil money penalties have proven to be an effective enforcement tool in Federal programs. Authority to impose civil money penalties for the violations involved here would provide an added incentive for mortgagors to comply with their agreements.

HUD lacks sufficient tools to assure that participants in its programs comply with program requirements. The applicable criminal penalties are often insufficient to ensure enforcement since problems of proof make criminal prosecution difficult. Authorizing the Secretary to impose civil money penalties for violations of specific program requirements will permit HUD more effectively to deter fraud and other violations under HUD programs. The possibility of civil money penalties should also help expedite execution of settlement agreements.

Gaps in existing legislation, primarily the Program Fraud Civil Remedies Act (PFCRA) and the False Claims Act, necessitate this amendment. No penalty can be secured under the PFCRA unless there is a false statement, in the form of a certification, or a false claim. The False Claims Act also requires a false claim. In many of HUD'd mortgagor cases, however, certified false statements and false claims have not been involved.

Section-by-Section Analysis

Subsection (a) of proposed section 537 [2] would make clear that the civil money penalty would be in addition to other available civil remedies or any available criminal penalties, and may be imposed whether or not other administrative sanctions are imposed.

Subsection (b)(1) would give the Secretary discretionary authority to impose a civil money penalty on any mortgagor of property that (A) has five or more living units and (B) has a mortgage insured, co-insured, or held pursuant to the National Housing Act where the mortgagor has (i) a written agreement, executed as a condition of a transfer of physical assets, a flexible subsidy loan, a capital improvement loan, a modification of the mortgage terms, or a work-out agreement, to use non-project income (ii) to make cash contributions for payments due under the note and mortgage, for payments to the reserve for replacements, to restore the project to good physical conditions, or to pay other project liabilities, for failure to comply with any of these commitments. (The reference to "Secretary" includes another department official).

In most instances, where one of these agreements is executed, the Secretary agrees to provide additional subsidy resources or to forego mortgage payments for a period of time, and, in consideration of the Secretary's agreement, the mortgagor agrees to provide additional cash contributions to the project income stream to restore the project to acceptable financial and physical condition. If, after the Secretary has provided the additional resources, the owner fails to make the agreed upon cash contribution, the project will not be restored and the Department's insurance funds will be further jeopardized.

Subsection (b)(2) would limit the amount of the civil money penalty for a violation of subsection (b)(1) to the amount of the loss the Secretary would experience at a foreclosure sale, or a sale after foreclosure.

Subsection (c)(1) would give the Secretary discretionary authority to impose a civil money penalty against any mortgagor of property that (A) has five or more living units and (B) has a mortgage insured, co-insured, or held pursuant to the National Housing Act for violations of the regulatory agreement executed by the mortgagor, as specified in subparagraphs (A)-(L).

Paragraph (1)(A) would provide for the imposition of a civil money penalty for the conveyance, transfer, or encumbrance of any of the mortgaged property, or for permitting such action without the prior written approval of the Secretary.

Paragraph (1)(B) would provide for the imposition of a civil money penalty for the assignment, transfer, disposition, or encumbrance of any personal property of the project, including rents, or paying out any funds, except for reasonable operating expenses and necessary repairs, without the prior written approval of the Secretary.

Paragraph (1)(C) would provide for the imposition of a civil money penalty for the conveyance, assignment, or transfer of any beneficial interest in any trust holding title to the property, or the interest of any general partner in a partnership owning the property, or any right to manage or receive the rents and profits from the mortgaged property, without the prior written approval of the Secretary.

Paragraph (1)(D) would provide for the imposition of a civil money penalty for remodeling, adding to, reconstructing, or demolishing any part of the mortgaged property or subtracting from any real or personal property of the project, without the prior written approval of the Secretary.

Paragraph (1)(E) would provide for the imposition of a civil money penalty where the mortgagor, as a condition of the occupancy or leasing of any unit in the project, requires any consideration or deposit other than the prepayment of the first month's

[2] All future references to subsections refer to subsections of proposed section 537 of the National Housing Act, except for the reference in the last paragraph, which refers to subsection (b) of this proposed section of this bill.

rent, plus a security deposit in an amount not in excess of one month's rent, to guarantee the performance of the convenants of the lease. This paragraph is designed to protect low- and moderate-income tenants and assure equal access for all applicants.

Paragraph (1)(F) would provide for the imposition of a civil money penalty for the failure to keep any funds collected as security deposits separate and apart from all other funds of the project in a trust account, the amount of which at all times equals or exceeds the aggregate of all outstanding obligations under that account. This paragraph is designed to prevent use of the tenants' security deposits for project costs, and, thus, assure the availability of these moneys when the tenants vacate the premises, provided that the premises are returned to the mortgagor in good condition.

Paragraph (1)(G) would provide for the imposition of a civil money penalty for paying over $500 for services, supplies, or materials when such payment substantially exceeds the amount ordinarily paid for such services, supplies, or materials in the area where the services are rendered or the supplies or materials furnished. While the majority of mortgagors are cost conscious, a minority do not adequately contain costs for reasons such as the lack of professional ability to do so; the receipt of kickbacks from the provider of the services, supplies, or materials; or an identity of interest with the firm supplying the services, supplies, or materials. This has an adverse impact on tenants whose rents are set at a level to pay for these costs. It can also have an adverse impact on the Department where it provides rent subsidies, or where the overpayment contributes to an insurance claim.

Paragraph (1)(H) would provide for the imposition of a civil money penalty for failure to maintain at any time the mortgaged property, equipment, buildings, plans, offices, and apparatus, devices, books, contracts, records, documents, and other related papers (including the failure to keep copies of all written contracts or other instruments which affect the mortgaged property) in reasonable condition for proper audit and for examination and inspection at any reasonable time by the Secretary or the Secretary's duly authorized agents. If the Secretary is to monitor and enforce mortgagor compliance with program requirements, it is imperative that these requirements be met.

Paragraph (1)(I) would provide for the imposition of a civil money penalty for failure to maintain the books and accounts of the operations of the mortgaged property and of the project in accordance with requirements prescribed by the Secretary. If the Secretary cannot impose sanctions to enforce compliance on the minority of recalcitrant mortgagors who fail to comply with this requirement, program enforcement is jeopardized since the project's cash flow is the cornerstone for maintaining the project in good fiscal and physical condition.

Paragraph (1)(J) would provide for the imposition of a civil money penalty for failure to furnish the Secretary, within 60 days following the end of each fiscal year, with a complete annual financial report based upon an examination of the books and records of the mortgagor, prepared and certified to by an independent public accountant or a certified public accountant and certified to by an officer of the mortgagor, unless the Secretary has approved an extension of the 60-day period in writing.

Paragraph (1)(K) would provide for the imposition of a civil money penalty when, at the request of the Secretary, the agents of the Secretary, the employees of the Secretary, or the attorneys of the Secretary, the mortgagor fails to furnish monthly occupancy reports or fails to provide specific answers to questions upon which information is sought relative to income, assets, liabilities, contracts, the operation and condition of the property, or the status of the insured mortgage.

Mortgagors of financially and physically solvent projects are not required to provide the Department with monthly accounting of cash income and outlays. When the Department becomes aware, however, that a mortgagor is having financial problems with regard to a particular project, it will require the mortgagor to provide monthly accounts of income and disbursements. This is necessary to assure the proper future maintenance of the project for the benefit of the tenants and to protect the Department from claims on the insurance funds.

Paragraph (1)(L) would provide for the imposition of a civil money penalty for failure to make promptly all payments due under the note and mortgage, including mortgage insurance premiums, tax and insurance escrow payments, and payments to the reserve for replacements when there is adequate project income available to make such payments. This provision is designed to avoid having the mortgage go into default when there is adequate project income available for the required payments.

Subsection (c)(2) would cap the amount of the civil money penalty for a violation of subparagraphs (A)–(L) at $25,000 for a violation of any of those subparagraphs. The monetary penalties that would be provided under subsection (c)(2) are similar to civil money penalties that are provided in many other Federal statutes which authorize the administrative imposition of such penalties. On September 19, 1986, Senator William Cohen placed in the Congressional Record a table listing the 200 Federal statutes then on the books authorizing enforcement through the administrative imposition of civil money penalties. These statutes included maximum penalties per violation ranging from $5 to $100,000 (132 Cong. Rec. S13,099-11 (1986)).

Subsection (d)(1) would require that the Secretary establish standards and procedures governing HUD's imposition of civil money penalties under subsections (b) and (c). In accordance with subparagraph (A), the Secretary or other department official (such as the Assistant Secretary for Housing) could make the determination to impose the penalty. In accordance with subparagraph (B), the standards and procedures would provide that the civil money penalty could not be imposed before the mortgagor had an opportunity for a hearing on the record by an Administrative Law Judge. Subparagraph (C) would authorize HUD to establish standards and procedures providing for review of any determination or order, or interlocutory ruling, arising from a hearing. If a hearing is not requested within 15 days of receipt of the notice of opportunity for hearing, the imposition of the civil money penalty would be a final and unappealable determination. If the Secretary reviews the determination or order of the Administrative Law Judge, the Secretary may affirm, modify, or reverse that determination or order. If the Secretary does not review the determination or order of the Administrative Law Judge, the determination or order would be the final determination or order of the Secretary.

In implementing the proposed civil money penalty authority, the Department contemplates using, to the maximum extent possible, the existing review procedures in 24 CFR Part 26 (Proceedings Before a Hearing Officer). Thus, the new authority would be coupled with a well-known, existing procedure.

Subsections (d)(2) would set forth factors to be considered in determining the amount of the civil money penalty. These would consist of the gravity of the offense, any history of prior offenses (including those before enactment of this proposal), the ability of the developer to pay the penalty, injury to the public, benefits received, deterrence of future violations, and such other factors as the Secretary determines in regulations to be appropriate.

Subsection (e) would give mortgagors the right to judicial review in the U.S. Court of Appeals. The court also would have jurisdiction to consider any ancillary issues, such as administrative sanctions, covered by the notice of determination to impose a penalty under subsection (d). Subsection (e) would also make it clear that the reviewing court has the authority to order payment of the civil money penalty. This would avoid the possibility of the court's upholding a determination or order imposing a civil money penalty without ordering payment, which could necessitate additional litigation to secure payment. As is the existing practice with respect to other civil monetary penalties, the findings and determinations of the Secretary in imposing civil money penalties would not be subject to trial de novo by the reviewing court.

Under subsection (f) the Department could request the Attorney General to institute an action in an appropriate U.S. district court against a person that fails to pay a civil money penalty after it has become a final and unappealable order. The action would seek a money judgment against the person as well as any other relief that may be available. The money judgment could include attorneys' fees and other expenses of the United States in bringing the action. The validity and appropriateness of the final order imposing the civil money penalty would not be subject to the review.

Subsection (g) would give the Secretary discretion to compromise, modify, or remit any civil money penalty before or after it has been imposed. Since it is the goal of this proposal to achieve compliance with the requirements of programs administered by the Department, subsection (g) would permit the Secretary to enter into settlements which would provide for such compliance, including compromise, modification, or return of any civil money penalties.

Subsection (h) would require the Secretary to issue regulations to implement the new authority.

Subsection (i) would provide for the Secretary to deposit the civil money penalties collected under this proposal into the miscellaneous receipts of the Treasury.

Section 108(b) would provide that the new authority would only cover violations of the Act that occur after the effective date of the amendment. It is, however, intended that this legislation be applicable to existing mortgagors as well as those who enter the program in the future.

AUTHORITY FOR THE SECRETARY TO IMPOSE CIVIL MONEY PENALTIES ON SECTION 202 MORTGAGORS

Section 109(a) would amend the Housing Act of 1959 by adding a new section 202a to

authorize HUD to impose civil money penalties against mortgagors of property that (1) includes five or more living units and (2) has a mortgage or held pursuant to the Housing Act of 1959. The proposal would authorize the imposition of civil money penalties for certain violations of (A) an agreement entered into as a condition of a transfer of physical assets, a flexible subsidy loan, a capital improvement loan, a modification of the mortgage terms, or a work-out agreement; or (B) the regulatory agreement executed by the mortgagor. The penalty for violation of the agreement described in (A) above could not exceed the amount of the loss the Secretary would experience at a foreclosure sale, or a sale after foreclosure. The penalty for violation of the regulatory agreement would be capped at $25,000 for each of the specified violations.

The violations for which civil money penalties may be imposed under this section were selected from among the numerous violations which the Department may currently sanction. The Department considers the violations that would be subject to a civil money penalty under this section to be sufficiently egregious to warrant the imposition of a civil money penalty in appropriate circumstances.

While the majority of mortgagors comply with their commitments, the limited sanction presently available to the Secretary (such as declaring the mortgage in technical default for violation of the regulatory agreement, stopping subsidy payments, or foreclosing on the mortgage) have not been preventing a minority of recalcitrant mortgagors from disregarding their contractual obligations. These sanctions have a more adverse effect on the Department and the tenants than on the mortgagor. The results of the Department's declaration that a mortgage is in default are that the Department discontinues subsidy payments and the Department forecloses on the property at a loss. Due to these events, the project deteriorates physically and financially, with the consequent reduction in services to tenants. To avoid this, it is imperative that the Secretary have the ability to impose sanctions which are commensurate with the harm done by a recalcitrant mortgagor and which would deter mortgagors from disregarding their contractual obligations.

This amendment is similar to other civil money penalty proposals in this bill.

Need for the Legislation

Civil money penalties have proven to be an effective enforcement tool in Federal programs. Authority to impose civil money penalties for the violations involved here would provide an added incentive for mortgagors to comply with their agreements.

HUD lacks sufficient tools to assure that participants in its programs comply with program requirements. The applicable criminal penalties are often insufficient to ensure enforcement since problems of proof make criminal prosecution difficult. Authorizing the Secretary to impose civil money penalties for violations of specific program requirements will permit HUD more effectively to deter fraud and other violations under HUD programs. The possibility of civil money penalties should also help expedite execution of settlement agreements.

Gaps in existing legislation, primarily the Program Fraud Civil Remedies Act (PFCRA) and the False Claims Act, necessitate this amendment. No penalty can be secured under the PFCRA unless there is a false statement, in the form of a certification, or a false claim. The False Claims Act also requires a false claim. In many of HUD's mortgagor cases, however, certified false statements and false claims have not been involved.

Section-by-Section Analysis

Subsection (a) of proposed section 202a[3] would make clear that the civil money penalty would be in addition to other available civil remedies or any available criminal penalties, and may be imposed whether or not other administrative sanctions are imposed.

Subsection (b)(1) would give the Secretary discretionary authority to impose a civil money penalty on any mortgagor of property that (A) has five or more living units and (B) has a mortgage held pursuant to section 202 of the Housing Act of 1959 where the mortgagor has (i) a written agreement, executed as a condition of a transfer of physical assets, a flexible subsidy loan, a capital improvement loan, a modification of the mortgage terms, or a work-out agreement, to use non-project income (ii) to make cash contributions for payments due under the note and mortgage, for payments to the reserve for replacements, to restore the project to good physical condition, or to pay other project liabilities, for failure to comply with any of these commitments. (The reference to "Secretary" includes another department official.)

In most instances, where one of these agreements is executed, the Secretary agrees to provide additional subsidy resources or to forego mortgage payments for a period of time, and, in consideration of the Secretary's agreement, the mortgagor agrees to provide additional cash contributions to the project income stream to restore the project to acceptable financial and physical condition. If, after the Secretary has provided the additional resources, the owner fails to make the agreed upon cash contribution, the project will not be restored and the Department's section 202 loan fund will be further jeopardized.

Subsection (b)(2) would limit the amount of the civil money penalty for a violation of subsection (b)(1) to the amount of the loss the Secretary would experience at a foreclosure sale, or a sale after foreclosure.

Subsection (c)(1) would give the Secretary discretionary authority to impose a civil money penalty against any mortgagor of property that (A) has five or more living units and (B) has a mortgage held pursuant to section 202 of the Housing Act of 1959 for violations of the regulatory agreement executed by the mortgagor, as specified in subparagraphs (A)-(M).

Paragraph (1)(A) would provide for the imposition of a civil money penalty for the conveyance, transfer, or encumbrance of any of the mortgaged property, or for permitting such action without the prior written approval of the Secretary.

Paragraph (1)(B) would provide for the imposition of a civil money penalty for the assignment, transfer, disposition, or encumbrance of any personal property of the project, including rents, or paying out any funds, except for reasonable operating expenses and necessary repairs, without the prior written approval of the Secretary.

Paragraph (1)(C) would provide for the imposition of a civil money penalty for the conveyance, assignment, or transfer of any beneficial interest in any trust holding title to the property, or the interest of any general partner in a partnership owning the property, or any right to manage or receive the rents and profits from the mortgaged property, without the prior written approval of the Secretary.

Paragraph (1)(D) would provide for the imposition of a civil money penalty for remodeling, adding to, reconstructing, or demolishing any part of the mortgaged property or subtracting from any real or personal property of the project, without the prior written approval of the Secretary.

Paragraph (1)(E) would provide for the imposition of a civil money penalty where the mortgagor, as a condition of the occupancy or leasing of any unit in the project, requires any consideration or deposit other than the prepayment of the first month's rent, plus a security deposit in an amount not in excess of one month's rent, to guarantee the performance of the covenants of the lease. This paragraph is designed to protect low- and moderate-income tenants and assure equal access for all applicants.

Paragraph (1)(F) would provide for the imposition of a civil money penalty for the failure to keep any funds collected as security deposits separate and apart from all other funds of the project in a trust account, the amount of which at all times equals or exceeds the aggregate of all outstanding obligations under that account. This paragraph is designed to prevent use of the tenants' security deposits for project costs and, thus assure the availability of these moneys when the tenants vacate the premises, provided that the premises are returned to the mortgagor in good condition.

Paragraph (1)(G) would provide for the imposition of a civil money penalty for paying over $500 for services, supplies, or materials when such payment substantially exceeds the amount ordinarily paid for such services, supplies, or materials in the area where the services are rendered or the supplies or materials furnished. While the majority of mortgagors are cost conscious, a minority do not adequately contain costs for reasons such as the lack of professional ability to do so; the receipt of kickbacks from the provider of the services, supplies, or materials; or an identity of interest with the firm supplying the services, supplies, or materials. This has an adverse impact on tenants whose rents are set at a level to pay for these costs. It can also have an adverse impact on the Department where it provides rent subsidies, or where the overpayment contributes to an insurance claim.

Paragraph (1)(H) would provide for the imposition of a civil money penalty for failure to maintain at any time the mortgaged property, equipment, buildings, plans, offices, apparatus, devices, books, contracts, records, documents, and other related papers (including the failure to keep copies of all written contracts or other instruments which affect the mortgaged property) in reasonable condition for proper audit and for examination and inspection at any reasonable time by the Secretary or the Secretary's duly authorized agents. If the Secretary is to monitor and enforce mortgagor compliance with program requirements, it is imperative that these requirements be met.

Paragraph (1)(I) would provide for the imposition of a civil money penalty for failure to maintain the books and accounts of the operations of the mortgaged property and of the project in accordance with requirements prescribed by the Secretary. If the Secretary cannot impose sanctions to enforce compliance on the minority of recalci-

[3] All future references to subsections refer to subsections of proposed section 202a of the Housing Act of 1959, except for the reference in the last paragraph, which refers to subsection (b) of this proposed section of this bill.

trant mortgagors who fail to comply with this requirement, program enforcement is jeopardized since the project's cash flow is the cornerstone for maintaining the project in a good fiscal and physical condition.

Paragraph (1)(J) would provide for the imposition of a civil money penalty for failure to furnish the Secretary, within 60 days following the end of each fisal year, with a complete annual financial report based upon an examination of the books and records of the mortgagor, prepared and certified to by an independent public accountant or a certified public accountant and certified to by an officer of the mortgagor, unless the Secretary has approved an extension of the 60-day period in writing.

Paragraph (1)(K) would provide for the imposition of a civil money penalty when, at the request of the Secretary, the agents of the Secretary, the employees of the Secretary, or the attorneys of the Secretary, the mortgagor fails to furnish monthly occupancy reports or fails to provide specific answers to questions upon which information is sought relative to income, assets, liabilities, contracts, the operation and condition of the property, or the status of the insured mortgage.

Mortgagors of financially and physically solvent projects are not required to provide the Department with monthly accountings of cash income and outlays. When the Department becomes aware, however, that a mortgagor is having financial problems with regard to a particular project, it will require the mortgagor to provide monthly accounts of income and disbursements. This is necessary to assure the proper future maintenance of the project for the benefit of the tenants and to protect the Department from claims on the insurance funds.

Paragraph (1)(L) would provide for the imposition of a civil money penalty for failure to make promptly all payments due under the note and mortgage, including tax and insurance escrow payments, and payments to the reserve for replacements when there is adequate project income available to make such payments. This provision is designed to avoid having the mortgage go into default when there is adequate project income available for the required payments.

Paragraph (1)(M) would provide for the imposition of a civil money penalty for amendment of the mortgagor's articles of incorporation or by-laws, other than as permitted under the terms of the articles of incorporation approved by the Secretary, without the prior written approval of the Secretary. This paragraph is designed to assure the maintenance of the nonprofit status of the mortgagor and the regulatory controls imposed by HUD.

Subsection (c)(2) would cap the amount of the civil money penalty for a violation of subparagraphs (A)-(M) at $25,000 for a violation of any of those subparagraphs. The monetary penalties that would be provided under subsection (c)(2) are similar to civil money penalties that are provided in many other Federal statutes which authorize the administrative imposition of such penalties.

Subsection (d)(1) would require that the Secretary establish standards and procedures governing HUD's imposition of civil money penalties under subsections (b) and (c). In accordance with subparagraph (A), the Secretary or other department official (such as the Assistant Secretary for Housing) could make the determination to impose the penalty. In accordance with subparagraph (B), the standards and procedures would provide that the civil money penalty could not be imposed before the mortgagor had an opportunity for a hearing on the record by an Administrative Law Judge. Subparagraph (C) would authorize HUD to establish standards and procedures providing for review of any determination or order, or interlocutory ruling, arising from a hearing. If a hearing is not requested within 15 days of receipt of the notice of opportunity for hearing, the imposition of the civil money penalty would be a final and unappealable determination. If the Secretary reviews the determination or order of the Administrative Law Judge, the Secretary may affirm, modify, or reverse that determination or order. If the Secretary does not review the determination or order of the Administrative Law Judge, the determination or order would be the final determination or order of the Secretary.

In implementing the proposed civil money penalty authority, the Department contemplates using, to the maximum extent possible, the existing review procedures in 24 CFR Part 26 (Proceedings Before a Hearing Officer). Thus, the new authority would be coupled with a well-known, existing procedure.

Subsection (d)(2) would set forth factors to be considered in determining the amount of the civil money penalty. These would consist of the gravity of the offense, any history of prior offenses (including those before enactment of this proposal, the ability of the borrower to pay the penalty, injury to the public, benefits received, deterrence of future violations, and such other factors as the Secretary determines in regulations to be appropriate.

Subsection (e) would give mortgagors the right to judicial review in the U.S. Court of Appeals. The court also would have jurisdiction to consider any ancillary issues, such as administrative sanctions, covered by the notice of determination to impose a penalty under subsection (d). Subsection (e) would also make it clear that the reviewing court has the authority to order payment of the civil money penalty. This would avoid the possibility of the court's upholding a determination or order imposing a civil money penalty without ordering payment, which could necessitate additional litigation to secure payment. As is the existing practice with respect to other civil monetary penalties, the findings and determinations of the Secretary in imposing civil money penalties would not be subject to trial *de novo* by the reviewing court.

Under subsection (f), the Department could request the Attorney General to institute an action in an appropriate U.S. district court against a person that fails to pay a civil money penalty after it has become a final and unappealable order. The action would seek a money judgment against the person as well as any other relief that may be available. The money judgment could include attorneys' fees and other expenses of the United States in bringing the action. The validity and appropriateness of the final order imposing the civil money penalty would not be subject to the review.

Subsection (g) would give the Secretary discretion to compromise, modify, or remit any civil money penalty before or after it has been imposed. Since it is the goal of this proposal to achieve compliance with the requirements of programs administered by the Department, subsection (g) would permit the Secretary to enter into settlements which would provide for such compliance, including compromise, modification, or return of any civil money penalties.

Subsection (h) would require the Secretary to issue regulations to implement the new authority.

Subsection (i) would provide for the Secretary to deposit the civil money penalties collected under this proposal into miscellaneous receipts of the Treasury.

Section 109(b) would provide that the new authority would only cover violations of the Act that occur after the effective date of the amendment. It is, however, intended that this legislation be applicable to existing mortgagors as well as those who enter the program in the future.

AUTHORITY FOR THE SECRETARY TO IMPOSE CIVIL MONEY PENALTIES ON GNMA ISSUERS

Section 110 would amend the National Housing Act by adding a new section 317, which would authorize the Secretary to impose civil money penalties on an issuer of GNMA mortgage-backed securities or a GNMA custodian for the specific violations of GNMA program requirements, as applicable, including:

(1) failure to make timely payments of principal and interest (P&I) to security holders;

(2) failure to properly segregate cash flow from mortgages;

(3) improper use of escrows;

(4) transfer of pool servicing to an issuer not approved by GNMA;

(5) failure to maintain GNMA's standards for minimum net worth;

(6) failure of an issuer to notify GNMA of a change in business status;

(7) submission of false information or a false certification to GNMA; and

(8) hiring an individual or retaining an employee when the issuer or custodian knew, or should have known, that the individual or employee was suspended or debarred from HUD programs.

The penalty under this proposal would be $5,000 per violation, with a $1 million cap per violator for any related series of violations occurring during any one-year period. In the case of a continuing violation, each day would constitute a separate violation. There would be an opportunity for a hearing before an Administrative Law Judge and judicial review of the decision by the Secretary.

HUD lacks sufficient tools to assure that participants in its programs comply with program requirements. The applicable criminal penalties are often insufficient to ensure enforcement since problems of proof make criminal prosecution difficult. Authorizing the Secretary to impose civil money penalties for violations of specific program requirements will permit HUD more effectively to deter fraud and other violations under HUD programs, thus strengthening the sanctioning process. The possibility of civil money penalties also should help expedite execution of settlement agreements.

This amendment is similar to other civil money penalty proposals in the bill.

Section-by-section explanation

Subsection (a)(1)[4] would give the Secretary discretionary authority to impose a civil money penalty against a GNMA issuer or custodian that violates the requirements set forth in subsection (b). (The reference to "Secretary" includes another department

[4] All references to subsections refer to subsections of proposed new section 317 of the National Housing Act, except for the reference in the last paragraph, which refers to subsection (b) of this proposed section of this bill.

official.) The civil money penalty would be in addition to other available civil remedies or any available criminal penalties, and may be imposed whether or not other administrative sanctions are imposed.

Subsection (a)(2) would limit the amount of the civil money penalty to $5,000 for each violation, except that the maximum penalty for all violations committed by a GNMA issuer or custodian during any one-year period could not exceed $1 million. In the case of a continuing violation, each day would constitute a separate violation. These monetary standards are similar to many other civil money penalty provisions.

Subsections (b)(1)(A)-(J) would list the violations which may warrant the imposition of civil money penalties. The Department considers these violations to be sufficiently egregious to warrant the imposition of civil money penalties in appropriate circumstances. Subparagraph (b)(1)(K) covers violations of other statutory and administrative requirements.

Subsection (b)(1)(A) would provide for the imposition of a civil money penalty when a GNMA issuer fails to make a timely pass-through of principal and interest (P&I) payments from pooled mortgages to holders of GNMA securities. Timely receipt of P&I by investors is the cornerstone of the GNMA mortgage-backed securities program, and failure by an issuer to comply with this GNMA program requirement reduces investor confidence and increases expenditures by GNMA under its guaranty of timely payment to investors.

Subsection (b)(1)(B) would provide for the imposition of a civil money penalty when a GNMA issuer (as a mortgage servicer) fails to segregate all funds received from a mortgagor, whether P&I funds or escrow funds, or fails to deposit these funds in special custodial accounts with a depository institution whose accounts are insured by the National Credit Union Administration or by the Federal Deposit Insurance Corporation through the Bank Insurance Fund for banks and through the Savings Association Insurance Fund for savings associations. A failure to segregate escrow funds would make accounting for these amounts difficult and could encourage the improper diversion of these funds or other illegal activity. Diversion or failure to place these funds in insured accounts could result in increased GNMA expenditures (for P&I pass-through payments to investors) or increased mortgagor expenditures and/or default (for payment of escrow items such as taxes and insurance).

Subsection (b)(1)(C) would provide for the imposition of a civil money penalty when a GNMA issuer or custodian uses escrow funds for any purpose other than that for which they were received.

Subsection (b)(1)(D) would provide for the imposition of a civil money penalty when a GNMA issuer transfers servicing of a pool of mortgages to a servicer that has not been approved by GNMA, unless the transfer is expressly permitted by statute, regulation, or contract approved by the Secretary. Title III of the National Housing Act, known as the "Charter Act," contemplates that GNMA will provide a guarantee to security holders only with regard to a pool of mortgages serviced by an issuer that meets the requirements of the Charter Act. GNMA funds are at risk when a pool of mortgages is transferred to an issuer that does not meet these requirements.

Subsection (b)(1)(E) would provide for the imposition of a civil money penalty when a GNMA issuer fails to maintain a minimum net worth. GNMA funds are at risk if an issuer has insufficient financial resources to make timely payment on GNMA-guaranteed securities from its own funds when payments on pooled mortgages are delinquent.

Subsection (b)(1)(F) would provide for the imposition of a civil money penalty if an issuer fails to notify GNMA of a substantial change in its business status. For example, GNMA funds could be at risk if ownership of an issuer (and responsibility for servicing of pooled mortgages) changes without approval from GNMA.

Subsection (b)(1)(G) would provide for the imposition of a civil money penalty when an issuer or a custodian knew, or should have known, that information submitted to the Secretary was false. Issuers must provide accurate information if GNMA is to avoid costly claims on its guaranty of mortgage-backed securities. Under this provision, an issuer or a custodian would be subject to a civil money penalty if any of its employees knew, or should have known, that information submitted to GNMA was false.

Subsection (b)(1)(H) would permit the Secretary to impose a civil money penalty when an issuer or custodian hires an officer, director, principal, or employee whose duties will involve GNMA programs, directly or indirectly, when the issuer or custodian knew, or should have known, that the person was under suspension or debarment by the Secretary. Penalties also could be imposed when an issuer or custodian employs an officer, director, principal, or employee who continues to be involved in GNMA programs, directly or indirectly, when the issuer or custodian knew, or should have known, that the person was under suspension or debarment by the Secretary.

Subsection (b)(1)(I) would permit the Secretary to impose a civil money penalty on an issuer or custodian that submits a false certification to GNMA. Costly claims against GNMA could result from false certifications. This subsection also would permit the Secretary to impose a civil money penalty on an issuer that knowingly submits a false certification by another person or entity.

Subsection (b)(1)(J) would permit the Secretary to impose a civil money penalty on an issuer that fails to comply with an agreement, certification, or condition of approval set forth on, or applicable to, the application for approval as an issuer by GNMA. Approval by GNMA is conditioned upon commitments made by the issuer in its issuer application as well in the process of forming a pool of mortgages backing GNMA-guaranteed securities. For example, an issuer agrees to permit an examination of its records and accounts by GNMA. Failure of an issuer to comply with this commitment could put GNMA funds at risk.

Subsection (b)(1)(K) would permit the Secretary to impose a civil money penalty for the violation of any provisions of the Charter Act or any implementing regulation, handbook, or GNMA participant letter that is issued under the Charter Act. Since legislation cannot provide for every conceivable violation, this subsection would give the Secretary the flexibility to impose civil money penalties for violations of any other requirements in the Charter Act.

Subsection (b)(2) would require the Secretary to inform the Attorney General of the United States before taking action to impose a civil money penalty for a violation described in subsection (b)(1)(G) or (b)(1)(I).

Subsection (c)(1) would require that the Secretary establish standards and procedures governing HUD's imposition of civil money penalties under subsection (a). Under subsection (c)(1)(A), the standards would provide for the Secretary to make the determination to impose the penalty. Under subsection (c)(1)(B), the standards and procedures would provide that the civil money penalty could not be imposed before the issuer or the custodian had an opportunity for a hearing on the record before an Administrative Law Judge. If a hearing is not requested within 15 days of receipt of a notice of opportunity for hearing, the imposition of the civil money penalty would constitute a final and unappealable determination. Subsection (c)(1)(C) would authorize HUD to establish standards and procedures providing for review of any determination or order, or interlocutory ruling, arising from a hearing.

Subsection (c)(1)(C) would also provide that if the Secretary reviews the determination or order of the Administrative Law Judge, the Secretary may affirm, modify, or reverse that determination or order. If the Secretary does not review the determination or order of the Administrative Law Judge, the determination or order would be the final determination or order of the Secretary.

In implementing the proposed civil money penalty authority, the Department contemplates using, to the maximum extent possible, the existing review procedures in 24 CFR Part 26 (Proceedings Before a Hearing Officer). Thus, the new authority would be coupled with a well-known, existing procedure.

Subsection (c)(2) would set forth the factors to be considered in determining the amount of the civil money penalty. These factors would include the gravity of the offense, any history of prior offenses (including those before enactment of this amendment), the ability of the issuer or the custodian to pay the penalty, injury to the public, benefits received, deterrence of future violations, and such other factors as the Secretary determines through regulations.

Subsection (d) would give issuers and custodians the right to judicial review in a U.S. court of appeals. The court also would have jurisdiction to consider any ancillary issues covered by the notice of determination to impose a penalty under subsection (c). Subsection (d) would clarify that the reviewing court has the authority to order payment of the civil money penalty. This clarification would avoid the possibility of the court's upholding a determination or order imposing a civil money penalty without ordering payment, as is the practice with other civil monetary penalties, which could necessitate additional litigation to secure payment. The findings and determinations of the Secretary in imposing money penalties would not be subject to trial *de novo* by the reviewing court.

Under subsection (e), the Department could request the Attorney General to institute an action in an appropriate U.S. district court against an issuer or a custodian that fails to pay a civil money penalty after the penalty becomes a final and unappealable order. The action would seek a money judgment against the issuer or the custodian, as well as any other relief that may be available. The money judgment could include attorneys' fees and other expenses of the United States in bringing the action. The validity and appropriateness of the final

order imposing the civil money penalty would not be subject to review.

Subsection (f) would give the Secretary discretion to compromise, modify, or remit any civil money penalty before or after it has been imposed. The goal of this legislative proposal is to achieve compliance with the requirements of programs administered by the Department; consequently, subsection (f) would permit the Secretary to enter into settlements which would provide for such compliance, including compromise, modification, or return of any civil money penalties.

Subsection (g) would require the Secretary to issue regulations to implement the new authority.

Subsection (h) would provide for the Secretary to deposit all civil money penalties collected under this legislative amendment into miscellaneous receipts of the Treasury.

Section 110(b) would provide that the new authority would only cover issuer violations that occur after the effective date of the amendment. In the case of a continuing violation (as determined by the Secretary), the new authority would apply to any portion of the violation occurring on or after that effective date.

AUTHORITY FOR THE SECRETARY TO IMPOSE CIVIL MONEY PENALTIES FOR VIOLATIONS OF THE INTERSTATE LAND SALES FULL DISCLOSURE ACT

Section 111 would amend section 1423 of the Interstate Land Sales Full Disclosure Act to authorized HUD to impose civil money penalties against land developers for violations of the Act which relate to: the failure to register non-exempt subdivisions; the failure to provide full and accurate disclosure to consumers; and the use of deception, misrepresentation, or fraud in the promotion and sale of their properties. The penalties under this proposal would be $1,000 per violation, up to $1 million a year per violator for any related series of violations, after opportunity for a hearing. In the case of a continuing violation, each day would constitute a separate violation.

This amendment is similar to other civil money penalty proposals in the bill.

Civil money penalties have proven to be an effective enforcement tool in Federal programs. Authority to impose civil money penalties for the violations involved here would provide an added incentive for developers to comply with the Interstate Land Sales Act's requirements, thereby resulting in more accurate and complete disclosure to the public. The provision that, in the case of a continuing violation, each day will constitute a separate violation will also increase the incentive for developers to comply with the Act. One of the common violations of the Act, is the failure to register non-exempt subdivisions with HUD, which is a continuing violation.

HUD lacks sufficient tools to assure that participants in its programs comply with program requirements. The applicable criminal penalties are often insufficient to ensure enforcement since problems of proof make criminal prosecution difficult. Authorizing the Secretary to impose civil money penalties for violations of specific program requirements will permit HUD more effectively to deter fraud and other violations under HUD programs. The possibility of civil money penalties should also help expedite execution of settlement agreements.

Currently, the most serious civil sanction HUD can impose administratively for violations of the Interstate Land Sales Full Disclosure Act is the relatively mild one of requiring that developers offer refunds to affected purchasers. In order to secure a more severe civil penalty, the Department must file suit in Federal court seeking an injunction and ancillary relief. Because court action is lengthy and labor-intensive, HUD cannot file many suits, and even where it has filed and prevailed, sanctions have not been imposed quickly. Although the Act also provides for criminal suits, this is a limited enforcement tool since the violations must be willful. Accordingly, few criminal prosecutions have been brought. Where such actions have been brought and decisions rendered for the government, penalties have not been imposed quickly. As a result, a significant number of developers have chosen to take the risk of violating the Act. The potential imposition of a monetary fine, in addition to the existing penalties, would curtail, if not extinguish, this attitude.

The penalty provided by this proposal would be $1,000 per violation although it would be $5,000 under the proposal authorizing penalties against FHA mortgages and lenders. This proposal would provide for a lower penalty per violation because (1) the higher penalty would be unduly burdensome to companies in the land sales industry; and (2) there is apt to be a greater number of violations of the Interstate Land Sales Full Disclosure Act than of FHA program requirements, and, accordingly, a lower penalty per violation can serve as a deterrent.

Subsection (a)(1)[5] would give the Secretary discretionary authority to impose a civil money penalty against any person who violates any of the provisions of the Interstate Land Sales Full Disclosure Act, or any rule, regulation, or order issued under it. It would make clear that the money penalty would be in addition to other available civil remedies or any available criminal penalties, and may be imposed whether or not other administrative sanctions are imposed.

Subsection (a)(2) would limit the amount of the civil money penalty to $1,000 for each violation, except that the maximum penalty for all violations committed by a developer during any one-year period could not exceed $1 million. In the case of a continuing violation, each day would constitute a separate violation. These monetary standards are similar to many other civil money penalty provisions.

Subseciton (b)(1) would require that the Secretary establish standards and procedures governing HUD's imposition of civil money penalties under subsection (a). (The reference to "Secretary" includes another department official.) In accordance with subsection (b)(1)(A), the standards and procedures would provide that the civil money penalty could not be imposed by the Secretary before the developer had an opportunity for a hearing on the record by an Administrative Law Judge. If no hearing is requested within 15 days of receipt of the notice of opportunity for hearing, the imposition of the penalty would constitute a final and unappealable determination. Subsection (b)(1)(B) would authorized HUD to establish standards and procedures providing for review of any determination or order, or interlocutory ruling, arising from a hearing. If the Secretary reviews the determination or order of the Administrative Law Judge, the Secretary may affirm, modify, or reverse that determination or order. If the Secretary does not review the determination or order of the Administrative Law Judge, the determination of order would be the final determination or order of the Secretary.

In implementing the proposed money penalty authority, the Department contemplates using, to the maximum extent possible, the existing review procedures in 24 CFR Part 26 (Proceedings Before a Hearing Officer). Thus, the new authority would be coupled with a well-known, existing procedure.

Subsection (b)(2) would set forth factors to be considered in determining the amount of the civil money penalty. These would consist of the gravity of the offense, any history of prior offenses (including those before enactment of this proposal), the ability of the developer to pay the penalty, injury to the public, benefits received, deterrence of future violations, and such other factors as the Secretary determines in regulations to be appropriate.

Subsection (c) would provide for judicial review in a United States court of appeals, as provided currently in section 1411 of the Act. Subsection (c) would also make it clear that the reviewing court has the authority to order payment of the civil money penalty.

Under subsection (d), the Department could request the Attorney General to institute an action in an appropriate U.S. district court against a person that fails to pay a civil money penalty after it has become a final and unappealable order. The action would seek a money judgment against the person as well as any other relief that may be available. The money adjustment could include attorneys' fees and other expenses of the United States in bringing the action. The validity and appropriateness of the final order imposing the civil money penalty would not be subject to the review.

Subsection (e) would give the Secretary discretion to compromise, modify, or remit any civil money penalty before or after it has been imposed. Since it is the goal of this proposal to achieve compliance with the requirements of programs administered by the Department, subsection (e) would permit the Secretary to enter into settlements which would provide for such compliance, including compromise, modification, or return of any civil money penalties.

Subsection (f) would require the Secretary to issue regulations to implement the new authority.

Subsection (g) would provide for the Secretary to deposit the civil money penalties collected under this proposal into miscellaneous receipts of the Treasury.

Section 111(b) would provide that the new authority would only cover violations of the Act that occur after the effective date of the amendment. In the case of a continuing violation (as determined by HUD), the new authority would apply to any portion of the violation occurring on or after that effective date.

CONSULTANT REFORMS

Section 112 would establish a strict requirement that consultants, lobbyists, and lawyers who attempt to influence departmental decisions for clients attempting to obtain assistance from HUD or that are involved in a management action (including sanctions), must register with the Department. In addition, all those applying for as-

[5] All references to subsections refer to subsections of proposed revised section 1423 of the Interstate Land Sales Full Disclosure Act, except for the reference in the last paragraph, which refers to subsection (b) of this section of this bill.

sistance or involved in a management action would be required to disclose any fees paid to consultants, lobbyists, and lawyers to influence the Department's decision. The Secretary would have the authority to deduct any such fees from the amount of assistance, reduce the amount of insurance for which the applicant otherwise would have been eligible by the amount of the fees, or take the fees into account when taking the management action. The Secretary also would have the authority to impose civil money penalties of up to $10,000 for each failure to register or to provide information with respect to fees.

Persons who spend or receive less than $5,000 in any calendar quarter and less than $10,000 in any Federal fiscal year to influence a departmental decision would be exempt from the reporting and registration requirements of this section. This would allow, for example, PHA consultants to provide necessary technical and professional assistance to PHAs without subjecting either the PHAs or consultants to the requirements of this section.

Many of HUD's worst problems first came to light in the Inspector General's reports to Congress. Among the issues addressed in these reports were allegations that housing grants had been awarded to certain developers who paid huge fees to politically connected consultants and lobbyists who did little more than open doors and place phone calls. In the past, politically connected consultants have received as much as $1,500 per unit to arrange funding awards in advance of public notice. This section would help assure that influence peddlers who earn substantial sums of money for making a few phone calls would be put out of business. If such activities had been subject to the requirements of this section, they never would have happened.

This section would require each person who makes an expenditure (above the threshold) to influence a departmental decision with respect to any assistance within the jurisdiction of the Department or any management action with respect to such assistance to file annual reports with the Secretary. The term "assistance within the jurisdiction of the Department" would include any contract, grant, loan, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan, mortgage, or pool of mortgages. The term "management action" would include any action involving any assistance within the jurisdiction of the Department that has been or is planned to be, taken, or is under consideration, including any administrative sanction, recovery or conditioning of assistance, abatement of rents in whole or in part, determination of default, or any other measure affecting any person. It also would require each person who receives payment to influence such departmental decisions to register with the Secretary and to file annual reports for as long as the activity continues. Both types of reports would be published in the Federal Register.

The reports would contain detailed information with respect to expenditures made or payments received to influence departmental decisions, including the persons, amounts, dates, and purposes involved. However, the reports would exclude payment or reasonable compensation made to regularly employed officers and employees of the person who requests or receives assistance within the jurisdiction of the Department, or who is involved in any management action with respect to such assistance.

This section also would authorize the Secretary to impose civil money penalties of up to $10,000 for each violation for failure to file the reports required under this section. (The reference to "Secretary" would include another department official or an administrative entity.) The authority to impose this penalty would be in addition to any other available civil remedy or any available criminal penalty, and could be imposed whether or not the Secretary imposes other administrative sanctions. The person against whom the Secretary assesses a penalty would have an opportunity for a hearing by an Administrative Law Judge. After exhausting all administrative remedies, the person could file an appeal with the appropriate court of appeals of the United States. HUD would deposit civil money penalties collection under this section into miscellaneous receipts of the Treasury.

The section would take effect on the date specified in regulations implementing this section that are issued by the Secretary after notice and public comment. The regulations would establish standards that include determinations of what types of activities constitute influence with respect to departmental assistance decisions and management actions.

The Department notes that this section would overlap with the consultant reform provision (Byrd Amendment) in the Department of Interior appropriations Act (P.L. 101-121), which was signed by the President on October 23, 1989. However, in light of the problems at HUD with respect to consultants that have recently been uncovered, the Department believes that it needs the unique features of this consultant reform provision to address these problems. This provision differs from the Byrd Amendment in several respects, including: (1) the requirement that consultants register with HUD or be subject to a penalty; (2) the extension of coverage to management actions, including sanctions; and (3) the authorization of the Secretary to deduct consultant fees from assistance. The Department will work with Congress to eliminate the overlap between these two provisions.

TITLE II—MANAGEMENT REFORM

APPOINTMENT OF CHIEF FINANCIAL OFFICER AND FHA COMPTROLLER

Section 210 would amend section 4 of the Department of Housing and Urban Development Act to require the Secretary to appoint a Chief Financial Officer (CFO) and an FHA Comptroller. The CFO would be selected on the basis of demonstrated ability in financial management and financial systems development and operations, and would serve as the principal advisor to the Secretary on financial management. The CFO would, among other things, be responsible for (1) developing and maintaining a financial management system for the Department, (2) supervising and coordinating all financial management activities and operations of the Department, and (3) assisting in the financial execution of HUD's budget. The Chief Financial Officer would report to the Secretary through the Under Secretary.

The FHA Comptroller would be designated by the Secretary and report directly to the Assistant Secretary for Housing/FHA Commissioner. The Comptroller would conduct activities within the overall financial management systems developed and operated by the CFO. Responsibilities of the FHA Comptroller would include preparation of comprehensive FHA internal financial statements, maintaining the FHA general ledger and subsidy ledgers, and other activities related to the financial operations of FHA.

The appointment of these two officials would greatly assist the Department in resolving current financial problems due to past financial mismanagement and fraud, and would ensure against future financial mismanagement and fraud. In recent testimony on FHA performance, a representative of the General Accounting Office stated that the appointment of a chief financial officer within HUD and a corresponding comptroller in FHA would be an important part of the solution to HUD/FHA financial problems.

For example, inadequate attention paid by HUD officials and employees to the reconciliation of accounts, management reports, and cash tracking contributed to the recent cases of embezzlement of FHA funds by closing agents. Essentially, no one person at HUD (below the Secretarial level) was responsible for making sure that the different housing program offices and housing computer systems were working together to prevent fraud. The Chief Financial Officer and FHA Comptroller could prevent a reoccurrence of these types of theft since they would be responsible for ensuring that cash management systems are tightly controlled.

Moreover, section 301 of this bill would require FHA to publish annual audited financial statements, prepared by an independent accounting firm. The FHA Comptroller would be responsible for ensuring that all accounting systems are well-managed and capable of being fully audited every year. Results would be consolidated with the HUD general ledger under the auspices of the Chief Financial Officer and then transmitted to the Congress and published each year.

PROGRAM EVALUATION AND MONITORING

Section 202 would authorize the Secretary to use up to 0.5% of the amounts appropriated for the programs noted below for evaluation and monitoring of these programs (including the entire public housing and section 202 programs). The specific amount that could be drawn from each program would be set forth in an appropriation Act. In addition to specifying the amount, the appropriation Act would also specify the account to which the specified amounts would be transferred, i.e., Salaries and Expenses, Research and Technology, or possibly others. The programs affected would be these:

Public and Indian housing development and modernization,
Section 202 rental handicapped assistance,
Counseling,
Fair Housing Assistance,
CDBG and Urban Homesteading,
Section 8 rental assistance,
Flexible subsidy,
Congregate housing,
Child care demonstration,
Fair Housing Initiatives,
McKinney Act homeless assistance, and
Rental Rehabilitation.

HUD spends between $17 and $18 billion per year in grants and assistance, but less than $25 million for evaluation, monitoring, and related research to detect flaws in program design and improve program operations. Funding for HUD's Office of Policy Development and Research has dropped from $50 million in 1980 to $17 million in 1989. Of this, less than $6 million is available for new activities; the rest is committed to continue the American Housing Survey and other Census-conducted surveys, as re-

quired by law. Accordingly, essential program evaluations and monitoring activities have been postponed.

The section 8 rental assistance program illustrates the need for better evaluation information. The Department lacks complete records for about the 2.4 million households that it assists at a cost of approximately $10 billion per year, as well as other information needed to evaluate where program improvements are needed. Increased expenditures for evaluation and monitoring will be more than offset by averting unnecessary payments, waste, and fraud in connection with the section 8 and other programs of the Department. The kinds of evaluation activities the Department would consider undertaking under this proposal include:

Homeownership and Affordable Housing. Evaluations of the effectiveness of various housing assistance programs in reaching the appropriate population, in improving the housing and general living conditions of recipients, and in increasing economic opportunities for recipients. These evaluations will assess how different assistance strategies work for different populations and in different economic conditions. Evaluations of techniques to prevent or cure default problems in multifamily projects.

Homelessness. Evaluations of the HUD McKinney Act programs to determine if funds are reaching the people who need help and are being used effectively, as well as evaluations of the impact of homeless assistance on recipients, including its effectiveness in keeping formerly homeless people from becoming homeless again.

Drug-Free Public Housing. Evaluations of the effectiveness of strategies to reduce the vulnerability of particular housing environments to drugs and evaluations of the impact of successful strategies on tenant living conditions and tenant economic status.

Resident Management and Homesteading. Evaluations of the effectiveness of resident management corporations (RMCs) in improving tenant living conditions; and evaluations of urban homesteading programs.

Economic Development and Enterprise Zones. New evaluations of the entitlement and State CDBG programs and the development of baseline data for determining the impact of enterprise zones.

Fair Housing. Evaluations to determine the effectiveness of HUD's implementation of the new fair housing law, and of activities funded by the Fair Housing Initiatives program, in combatting discrimination against minorities and other protected classes.

Only programs for which grant or other assistance funds are appropriated would be subject to the set-aside. The insurance and direct loan programs (other than Housing for the Elderly and Handicapped) do not receive such appropriations, and would not be covered by this proposal. The Research and Technology and Salaries and Expenses accounts, and in some circumstances the FHA Funds themselves, would normally be available to fund activities similar to those contemplated in this proposal. The amount appropriated for the Public Housing Operating Subsidy program also would not be affected, since the amount appropriated for that program is intended to be 100% of the amount necessary to provide for the operation of public housing. The amounts available for public housing, however, could be used to evaluate and monitor the entire program.

Finally, to assure that all amounts set aside are used expeditiously, the amount set aside would be centrally controlled and any amounts that remain available for obligation at the end of the fiscal year after the fiscal year for which they were appropriated would be rescinded.

EXPEDITING HUD RULEMAKING

Section 203 would make a small but significant change in the congressional review procedures that apply to the production of HUD rules. The change is designed to retain the existing machinery for congressional oversight of HUD rules, while avoiding the extended production delays that are an unintended, but sometimes severe, harmful side effect of the present law.

Current Section 7(o)

Section 7(o) of the Department of Housing and Urban Development Act—HUD's legislative review statute—was adopted in 1978 as a means of strengthening congressional oversight of the regulations development process at HUD. The statute has the following principal features:

Semiannual Agenda of Regulation. HUD is required twice annually to submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives an agenda of all regulations that the Department has under development or review.

Rules to be published for comment. The Department may not publish for comment in the *Federal Register* any regulation on the Semiannual Agenda for 15 "congressional session days" after the Agenda's submission. If, within this period, either Banking Committee requests review of particular regulations on the Agenda that was to be published for comment, each requested regulation must be submitted to both Committees for a period of 15 "congressional session days" before it is published.

Rules published for effect. Any HUD rule published for effect must have its effectiveness delayed for 30 "congressional session days" after its date of publication. If, during that period, either Committee reports out, or is discharged from further consideration of, a joint resolution of disapproval or other legislation intended to modify or invalidate the regulation, the rule's effectiveness must be delayed for an additional 90 calendar days from the date of the Committee's action.

Calculation of "congressional session days." The 15- and 30-day clocks must begin anew if interrupted by an adjournment of Congress *sine die,* and the count of "congressional session days" is suspended during any recess of either House of more than three days.

Deficiencies in the Current Process

Section 7(o) suffers from a major defect. Use of "congressional session days" to calculate the 15- and 30-day waiting periods has seriously impeded the Department's ability to implement its regulatory priorities. The congressional calendar for each year is sprinkled with recesses, including an "August recess" of about a month. The longer the waiting period, the greater the delay in the Department's ability to promptly publish rules that either Committee has selected from the Agenda, or to make any published rule effective.

The delays have been particularly troublesome where Congress adjourns *sine die.* These adjournments typically occur in October or November and continue until Congress returns the following January. The "dead time" occasioned by adjournments *sine die* can delay the effectiveness of a published rule for five months or more.

The treatment of HUD rules at the end of the 100th Congress (last year) provides a good example of the excessive delays brought about by the present congressional review provisions. The Congress adjourned on October 21, 1988. In order to satisfy section 7(o)'s waiting periods in calendar year 1988, the following types of rules would have been required to reach the following stages:

Rule requested from the Agenda, to be published for comment: Rule must have been sent to the Banking Committees by October 7, 1988.

Published rule to take effect: Rule must have been *published* by September 22, 1988.

Interim rule requested from the Agenda, to be published for comment and for effect: Rule must have been published by September 7, 1988 (a total of 45 "session days:" 15—since the rule is to be published for public comment—and 30—since the rule is also to be published for effect).

A rule that failed to meet these dates, even by one day, would lose all its "review" days in the 100th Congress, and would have to begin again in the 101st Congress. Given the congressional schedule for the 101st Congress, the "review" periods would be satisfied as follows:

Rule requested from the Agenda, to be published for comment: Could be published after February 7, 1989.

Published rule to take effect: Could take effect on March 6, 1989.

Interim rule requested from the Agenda, to be published for comment and for effect: Could take effect on April 4, 1989.

Thus, for rules that failed to meet the applicable waiting periods in the 100th Congress by one day, the delays occasioned by operation of section 7(o) would be:

Four months for a requested rule to be published for comment.

Almost six months for a published rule to take effect.

Amost seven months for a requested interim rule to take effect.

Clearly, these delays are crippling to the Department's ability to implement rule priorities. It is also worth noting that this "all or nothing" feature of section 7(o) takes its toll on all HUD regulations—including those needed to implement policy initiatives that the Congress and HUD both consider priorities.

In addition, section 7(o)'s schedule forces the Department to take into account what should be a wholly irrelevant consideration in managing its regulatory program—the congressional calendar. Rules production often turns on whether there are enough "congressional session days" to accommodate a proposed or final rule, without regard to the relative priority of the task.

The Amendment

Based on the above analysis, the Department has sought repeal of section 7(o) several times in the past. It is clear, however, that the Banking Committees continue to believe that a special tool for regulatory oversight is needed. Section 203 is the Department's response to this impasse.

This proposal would retain the legislative review framework in its entirety. However, it would eliminate the "congressional session day" as the unit of measurement for determining the length of review time to which rules are made subject.

Rules requested from a HUD agenda for review by either Banking Committee would,

under the proposal, undergo review for 15 calendar days.

Any HUD rule published for effect would be required to await 30 calendar days after its publication before it could become effective. (Interim rules, as in the past, would be subject both to a 15-day prepublication review period and the 30-day waiting period following publication—but the periods would be measured in calendar days.)

Under current section 7(o), the 15- and 30-day waiting periods are suspended by extended congressional recesses and stopped entirely by adjournments sine die. As noted, this feature of section 7(o) has caused delays in the Department's regulatory efforts, and has distorted the Department's regulatory priorities.

The proposal would address these problems by permitting the 15- and 30-day clocks to continue running during periods of congressional absence.

The Department believes that this approach strikes a reasonable balance between the oversight needs of the Congress and the Department's rulemaking responsibilities. Congress would be provided an adequate period to review HUD rules, and the Department's rulemaking priorities would be delayed to permit this review, but would not be brought to a half for extended periods.

There have been virtually no instances in recent years when the Congress used the legislative review process for the purpose of attempting to stop a HUD rule by formal legislative means. Most often, congressional objections to rules submitted for prepublication review are expressed informally in communications to the Department, and HUD has reacted, in the rare instances where such communications have occurred, on a case-by-case basis, depending upon the nature of the objection. Neither 15 calendar days nor 15 session days will normally be an adequate time for more than such informal communications. However, 15 calendar days—even during a recess—is enough time for a member to communicate his or her displeasure about a policy choice to the Secretary.

Similarly, the Congress can always use its influence to alter the course of HUD rules—even those published for effect—during the 30-day waiting period that the amended law would provide. The proposed revision recognizes that, whether or not the Congress is in session, committee members and their staffs are at work and are in a position to communicate with HUD any concerns they may have about a rule.

RATIFICATION OF THE USE OF NATIONAL COMPARABILITY PROCEDURES FOR SECTION 8 RENTS

Section 204 would recognize that HUD is authorized to use comparability studies in the implementation of section 8(c)(2) of the United States Housing Act of 1937. It would also expressly ratify and declare valid the interpretation that HUD has accorded section 8(c)(2) of the 1937 Act in HUD's past and continuing use of comparability studies under section 8(c)(2)(C) of the 1937 Act as an independent limitation on the amount of rental adjustments that would otherwise result from application of the annual adjustment factors (AAF) under section 8(c)(2)(A) of the 1937 Act. This section would also provide that where litigation has resulted in a judgment before the date of enactment of this section that is final and not appealable (including an order of settlement) and that is inconsistent with HUD's interpretation of section 8(c)(2), the ratification could not be used as the basis for requiring the repayment of amounts paid by HUD in accordance with the judgment or for refusal by HUD to pay amounts required by the judgment.

This section would correct the recent decision in *Rainier View Associates* v. *U.S.* 848 F.2d 988 (9th Cir. 1988), cert. denied, —— U.S. ——, 109 S. Ct. 2065 (1989), which declared that HUD lacked authority to use comparability studies to limit adjustments under the AAF as a means of satisfying section 8(c)(2)(C)'s mandate that rents provided under section 8(c)(2) "not result in material differences between the rents charged for assisted and comparable unassisted units". The Ninth Circuit holding is contrary to the intent of the statute since it wrongfully deprives the Secretary of the discretion Congress gave the Department to determine how to implement the comparability limit in section 8(c)(2)(C) and frustrates that section's purpose by allowing project owners to receive unjustified windfall profits through rent adjustments which would raise rents above market rates. Congress has already recently reviewed section 8(c)(2)(C), and in section 142(c)(2)(B) of the Housing and Community Development Act of 1987 implicitly accepted the Department's use of comparability studies by amending the statute to allow them to be used to limit AAFs if done on a timely basis. HUD's construction of section 8(c)(2)(C) has also been a predicate for the amounts appropriated for the section 8 program.

The *Rainier View* judgment and related litigation have already obliged HUD to pay $12 million in retroactive rents, and may require an added amount up to about $3 million. HUD estimates that if the *Rainier View* ruling were to be applied to all affected section 8 projects within the Ninth Circuit's jurisdiction alone, the potential financial exposure for retroactive payments might amount to as much as $200 million, and the cost of prospective rent increases over the next 10 years on the same basis may be another $300 million. Moreover, HUD estimates that if the Ninth Circuit case were applied nationwide, the Federal government's potential cost would reach as much as $1 billion for retroactive payments; and if the rationale for the case is applied in the future, it could cost an additional $1.5 billion over the next 10 years.

This section would also statutorily provide for an appeals procedure for project owners who wish to contest the findings of a comparability study. The appeals procedure under this section is consistent with the process currently employed by HUD with the exception that project owners who have not previously appealed the findings of a past comparability study would be given a window of 30 days from date of enactment if they wish to contest the findings of that study. HUD would be required within 1 year of enactment to publish proposed regulations requesting public comment and final regulations implementing an appeals procedure for owners to contest the findings of future comparability studies.

TARGETING CDBG AMOUNTS TO PERSONS OF LOW AND MODERATE INCOME

Section 205 would amend the Community Development Block Grant (CDBG) Program under title I of the Housing and Community Development Act of 1974 to improve the targeting of CDBG assistance to persons of low and moderate income.

Existing law contains two distinct provisions dealing with the relationship between assisted activities and benefit to low- and moderate-income persons. First are the three national objectives. Each activity that a grantee funds through the CDBG program must meet one of the three national objectives: benefit to low- and moderate-income persons; elimination or prevention of slums and blight; or meeting an urgent need.

Second is the extent to which assisted activities are used to benefit low- and moderate-income persons. Within the national objectives, a grantee is required to use 60% of the aggregate amounts it expends under the program—both section 106 grants and section 108 loan guarantee proceeds—over a one-to three-year period, as designated by the grantee, for activities that benefit low- and moderate-income persons.

The second requirement conveys the impression that at least 60% of the CDBG program's beneficiaries must be of low and moderate income. For the reasons stated below, this is not the case.

As a general rule, once an activity meets the national objective of benefiting low- and moderate-income persons, all the CDBG dollars spent on the activity are counted for purposes of meeting the 60% aggregate benefit counting requirement. An activity may qualify as meeting the national objective of benefiting low- and moderate-income persons if at least 51% of the activity's beneficiaries are low- and moderate-income persons. Thus, if a grantee spends 60% of its CDBG funds for an activity that has 51% low- and moderate-income beneficiaries, it would be credited with 60% "low/mod" benefit, even though perhaps only as low as 31% of all its funds actually benefited low- and moderate-income persons.

In certain "exception" communities (see section 105(c)(2) of the 1974 Act), an activity can qualify under the national objective of benefit to low- and moderate-income persons even if the percentage of "low/mod" beneficiaries is substantially less than 51%. Since all CDBG dollars spent on activities meeting this objective "count" toward the 60% aggregate benefit requirement, these "exception" communities can have overall programs that benefit low- and moderate-income persons even lower than the 31% figure discussed above. The lack of overall CDBG targeting is underscored by the fact that these "exception" communities account for 25% to 30% of all CDBG entitlement grantees.

The Department believes that these "low/mod" benefit provisions are insufficiently targeted. Particularly in this time of scarce Federal resources, the Department believes that available amounts should be directed more fully to those who need them most—low- and moderate-income persons. The proposal seeks to accomplish this end in three ways.

First, the proposal would increase from 60% to 75% the percentage of CDBG amounts—section 106 grants and section 108 loan guarantee proceeds—that must be used to benefit low- and moderate-income persons. This increase would recognize the overall need to more tightly target CDBG amounts to benefit low- and moderate-income persons, while still providing a measure of discretion in selecting activities to be carried out for this purpose.

Second, the proposal would require that all activities carried out by more affluent units of general local government benefit low- and moderate-income persons. Thus, these communities could not carry out CDBG activities that are designed to prevent or eliminate slums or blight or to meet urgent needs. This element of the proposal recognizes the fact that more affluent com-

munities are in a better position to meet the community and economic development needs of their wealthier constituents: for these communities, all CDBG activities would have to meet the national objective of benefit to low- and moderate-income persons.

The second change would not affect "severely distressed communities. Activities carried out by these communities would continue to be directed to any of the three national objectives, subject, of course, to the 75% "low/mod" benefit requirement described above. This reflects the fact that severely distressed units of general local government do not have sufficient local resources to provide for their community and economic development needs, and require greater flexibility in developing their CDBG programs.

Two types of units of general local government could be considered severely distressed for purposes of this amendment:

Those for which a major disaster is declared, in accordance with 42 U.S.C. 5121 et seq., and that meet such other standards as the Secretary may determine; or

Those that meet the minimum standards established by the Secretary for measuring the capacity of units of general local government to meet the needs of low- and moderate-income persons with their own resources.

Both of these standards would be contained in a regulation promulgated by the Secretary after notice and opportunity to comment.

The proposal's third element would change how program funds spent by grantees are credited for purposes of meeting the requirements that a minimum percentage of funds must be spent for low- and moderate-income persons. The amount of CDBG funds expended on most activities would be discounted to reflect only the extent to which the beneficiaries of such activities are comprised of low- and moderate-income persons. With the exception of activities involving the acquisition, construction, or improvement of property for housing, for purposes of meeting the 75% overall benefit requirement, the amount of program funds spent on an activity that does not exclusively benefit low- and moderate-income persons would be discounted to the degree that the percentage of low- and moderate-income persons benefiting from the activity falls short of 100%.

For example, consider a grantee's expenditure of $100,000 on an economic development activity that creates 10 new jobs, seven of which are taken by low- and moderate-income persons. Under the current statute and regulations, all $100,000 would be credited towards meeting the grantee's 60% overall expenditure requirement. Under the proposed approach, only 70% of the $100,000 (based on seven out of 10 jobs), or $70,000, would be credited towards meeting the new 75% overall benefit requirement. In order to raise the overall spending level to a minimum of 75% this grantee would need to spend an amount at least equal to $100,000 on another activity benefiting persons 80% or more of whom are low- and moderate-income persons.

Because of the national policy of attempting to avoid the undue concentration of low- and moderate-income persons geographically, an exception would be made for housing activities that are assisted with CDBG funds. Full credit for such expenditures would be given in any case where the proportion of units in the assisted housing that will be occupied by low- and moderate-income persons is at least equal to the percentage of the total cost of the activity that is contributed by CDBG funds.

HUD expects that many entitlement communities and States will not have to make adjustments to their selection of activities or, for States, their method of distribution to comply with these new requirements. Others would need to make relatively minor changes. However, HUD recognizes that for some communities and States these requirements would necessitate quite substantial modification to meet these targeting requirements.

An example of a grantee's annual program of activities would help illustrate how the proposed system would operate, and how it would differ from the system currently in place:

Grantee "A's" Annual Program of Activities totalling $500,000

Rehabilitate a recreation center serving a neighborhood having 30 percent low/mod income residency. (This would qualify as benefiting low/mod income persons assuming this community qualifies for the area benefit exception discussed above.)	$100,000
Loans to low/mod income elderly homeowners for emergency home repairs	150,000
Acquisition of land to be donated to a nonprofit housing developer on which the nonprofit will develop a 20-unit structure for rental housing for large families, five units of which will be held for occupancy by low- and moderate-income households at affordable rents. Total development costs are expected to be $1,000,000	100,000
Loan to a for-profit business to enable expansion, creating 10 new jobs, six of which will be held for low/mod income persons	100,000
Facade improvements for blight removal in a small business district located in a residential area having 40 percent low/mod income residency	50,000

DETERMINING THE OVERALL BENEFIT PERCENTAGE

Activity	Overall benefit using current counting procedure		Overall benefit based on proposal	
	Amount	Percent	Amount	Percent
Recreation center	$100,000		$30,000	
Homeowner loans	150,000		150,000	
Rental housing land	100,000		100,000	
Business loan	100,000		60,000	
Blight removal	0		20,000	
Total low/mod income benefit	450,000		360,000	
Overall benefit	450,000		360,000	
Percent	500,000	90	500,000	72

Note that the land acquisition for large family rental housing receives full credit under both the existing and proposed approaches, even though the project will only have low/mod income occupancy of 25%. This is because the CDBG contribution of $100,000 represents only 10% of the total project development costs, well below the 25% expected occupancy level of low- and moderate-income persons. Through the use of this exception, we aim to encourage a balancing of income levels among occupants of multi-unit housing projects. It should also be noted that, under the proposal, credit can be given for an activity that is carried out under the slums/blight and urgent needs objective in certain circumstances. While the number of communities that would be eligible to carry out activities under those objectives would be limited to those that are distressed, this could still be an important consideration for helping them to meet the overall 75% low/mod benefit level requirement.

Finally, the proposal contains a transition provision. The amendments made by the proposal would take effect upon enactment of this Act. Some units of general local government will, as noted earlier, have one or more years remaining on the time periods they designated for fulfilling the 60% "low/mod" benefit requirement of current law. These communities would be given an option: they can forego the remaining time and immediately switch to a new time period for implementing the new system by designating a new time period, or they can choose to remain with the old time period. In either event, the grantees would be required to comply with all of the requirements of this proposal upon their enactment.

CDBG ANTIPOVERTY STRATEGY

Section 206 would require each Community Development Block Grant grantee to certify, as a condition of receiving a grant, that it is following an antipoverty strategy which has been approved by HUD. The antipoverty strategy would:

(a) embody a plan that would provide housing, economic development, and social service resources to persons who are living in poverty and that, to the greatest extent possible, would involve close cooperation with community-based organizations comprised of low-income persons and others who have a stake in the community and with agencies providing assistance to low-income persons;

(b) estimate the number of people in the community or the nonentitlement areas of the State who are living in poverty, identify the principal areas and conditions in which they live, and explain the basis for this information;

(c) identify existing facilities, resources, and public and private organizations that are or could be used to address the needs of those living in poverty, and funding that could be used; and

(d) set forth a strategy for coordinating CDBG activities (or the method of distribution by States) with facilities, resources, organizations, and funding identified under paragraph (C);

Grantees would adopt their antipoverty strategies only after giving citizens or, in the case of States, units of general local government an opportunity to comment on the proposed strategy. The actions that apply to the development of statements of projected use of funds (or state methods of distribution) would also apply to the development of antipoverty strategies.

HUD would approve the strategy unless it is incomplete, the needs or conditions identified are plainly inconsistent with generally available facts or data, or the strategy for the use of CDBG funds is plainly inappropriate to address the identified needs.

This proposal would bring CDBG grantees into partnership with HUD as it wages a new war on poverty and would require them to think through a CDBG strategy consistent with Federal goals.

SYNTHESIS OF BLOCK GRANT SANCTIONS

Section 207 would synthesize the statutory sanctions under the community development block grant legislation to conform explicitly to a recent judicial decision and to

facilitate the exercise of these sanctions by HUD in an effective and equitable manner.

HUD's longstanding implementation of section 104(e) (to be redesignated as section 104(f) by section 206) and section 111 of the block grant statute was challenged in *Kansas City* v. *HUD*, 861 F.2d 739 (D.C. Cir. 1988). The Department's administration of the CDBG program had utilized a method of conditioning contracts to obtain improved performance by grantees. The court held that at least in some instances the full-scale administrative hearing provided for in section 111 must be furnished before a grant can be conditioned.

From virtually the beginning of the block grant program, HUD had taken the position that section 104 constituted authority to make adjustments, including potential adjustments by means of conditioning annual grants, for grants yet to be approved. It considered section 111, with its more detailed procedural requirements, to be applicable to any attempt by the Department to impose mandatory sanctions against grants that had been unconditionally obligated by the Department.

The distinction drawn by HUD, and contained in its regulations for more than a dozen years, was itself a reflection of the ambivalence in the statute between these two provisions. Section 111 was the vestige of the hands-off special revenue sharing-type approach proposed by the Nixon Administration in 1973; section 104(e) was a more hands-on, post-audit enforcement tool added by the Congress. From the beginning, the two provisions had a substantial overlap in that both covered instances of noncompliance. But the Court in *Kansas City* v. *HUD* found HUD's implementation wanting. Rather than applying the sanction respectively to whether the grant was already made or yet to be made, the court ruled that section 111 applied to all cases involving past substantial noncompliance by the grantee. The Department is now following the ruling in Kansas City, as well as the corollary authority to continue to condition upcoming grants for cases in which the performance problem is ongoing.

This amendment would update the legislation by expressly typing section 111 remedies to cases of past substantial noncompliance and section 104(e) to cases in which the performance problem is continuing. Further, the amendment would make clear the range of the Department's administrative hearings under section 111 in cases of past substantial noncompliance. This amendment would state expressly that the Department could exercise the sanctions in section 111 under an administrative hearing with regard to grants already made or to be made. The independent authority under section 111 to refer cases of substantial noncompliance to the Attorney General would be retained. Moreover, under this authority the Attorney General may seek money damages (which are not limited to the previously provided grants), as well as mandatory or injunctive relief.

Correspondingly, section 104 would also be revised to recognize expressly that the Department can undertake funding sanctions with respect to grants already made or to be made, but limited exclusively to cases of continuing performance problems. Any such sanctions, including conditioning, could only be imposed after the Secretary provided the grantee a reasonable opportunity for informal consultation.

This proposal aims to integrate the Kansas City decision in a programmatically efficient manner within the context of the original block grant legislation's separate remedies at sections 104 and 111.

NULLIFICATION OF RIGHT OF REDEMPTION OF SINGLE FAMILY MORTGAGORS UNDER SECTION 312 REHABILITATION LOAN PROGRAM

Section 208 would preempt State laws giving section 312 single family mortgagors a right to redeem their properties after foreclosure. Under State redemption statutes, mortgagors have a specified period of time to make payment on the foreclosed property and regain title. Subsection (a) applies to situations in which HUD or its foreclosure agent forecloses on its Section 312 loan, and subsection (b) applies to situations in which HUD buys in a property at the foreclosure sale of a mortgagor having a lien senior to HUD's section 312 loan mortgage. Under subsection (a), the foreclosure sale to any purchaser nullifies the right of redemption of the mortgagor. In the subsection (b) situation, the mortgagor's right of redemption will be nullified by the sale to HUD, and HUD may subsequently sell the property free of this encumbrance.

Preempting State redemption laws for section 312 single family properties would permit the Department to sell these properties under this section at foreclosure sale, or following a buy in, in the same expeditious manner as HUD-held single family properties under the FHA single family mortgage insurance program.

There is considerable legislative precedent for this section. Section 569 of the 1987 Act added section 204(*l*) to the National Housing Act to provide that when HUD forecloses on a HUD-held mortgage secured by a single family property, the purchaser at the sale is entitled to receive immediate title to property, notwithstanding any State law granting redemption rights to the mortgagors. This provision is analogous to proposed subsection (a) cases where HUD forecloses. (A provision analogous to proposed subsection (b) that would apply to FHA single family mortgages is not necessary since FHA takes only first lien positions.) The right of redemption had earlier been nullified for all Secretary-held multifamily foreclosures (under both the National Housing Act and section 312), under the Multifamily Mortgage Foreclosure Act of 1981.

The various State laws which govern foreclosures pose several problems. During the lengthy periods of time required to foreclose (and provide redemption) under some State laws, the properties deteriorate and are subject to vandalism and fire loss, because they are vacant. The locations of section 312 properties tend to be in more urbanized, less affluent areas, where vacant properties tend to degrade faster, and where there may be a better opportunity for local government to use the property in an Urban Homesteading program. Vacant, deteriorating properties adversely affect the neighborhoods and communities in which they are located. Further, while the properties are in a "limbo" state due to redemption delays, they are being lost to the national stock of livable housing. Legislation preempting State redemption statutes can diminish these problems by reducing the amount of time it takes to foreclose, and then dispose of the property for reuse. The delay serves no purpose but to frustrate HUD's disposition efforts and the immediate occupancy of the building, since it is very rare that mortgagors redeem section 312 properties.

TITLE III—FEDERAL HOUSING ADMINISTRATION REFORM

ANNUAL FINANCIAL STATEMENTS

Section 301 would require the Secretary to make available to the public each year an audited financial statement of the insurance funds established under the National Housing Act beginning with fiscal year 1989. The statement would be required to present the financial condition of the funds on both a cash and accrual basis, consistent with generally accepted accounting principles (GAAP). Each financial statement would be audited by an independent accounting firm selected by the Secretary.

Annual audited financial statements are the most basic of all management requirements. In a financial operation, these comprehensive financial reports drive decisions that affect all lower level systems. The systems deteriorate without the discipline of rigorous annual review by senior management.

From 1974 to 1989, FHA's finances were not audited by an outside accounting firm. This meant that, for 15 years, public accountability was limited. The General Accounting Office (GAO) attempted audits in 1981 and 1984, but FHA's books were in such disarray that the preparation of financial statements was impossible. In 1987, GAO began again, this time spending two years working with Price Waterhouse and HUD's Office of Finance and Accounting to develop systems capable of measuring the agency's finances.

On September 27, 1989, GAO's Comptroller General reported to Congress that full financial statements for FHA had been completed. These statements showed a $4.2 billion accrual basis loss in FY 1988. FHA had reported a $856 million loss for the same period on a cash basis. The difference in these two amounts was due to the large number of defaults and delinquencies that occurred in 1988 but did not result in a claim paid by FHA. FHA's managers had an unrealistically rosy picture, because claims were only counted when they were paid, not when the default or delinquency occurred. FHA will have to pay these claims over the next several years.

Requiring annual audits of the funds on an accrual, as well as a cash, basis will, for the first time, give the Department, the public, and Congress a clear and unbiased picture of the financial status of FHA's programs. This will permit HUD to adjust its programs, inform Congress, and take other appropriate steps if serious imbalances in the funds develop.

ELIMINATION OF PRIVATE INVESTOR-OWNERS FROM THE FHA SINGLE FAMILY MORTGAGE INSURANCE PROGRAM

Section 302 would eliminate private investor-owners from participation in FHA's single family mortgage insurance programs. FHA's single family insurance programs should be designed to provide homeownership opportunities for families that will occupy their own homes. FHA should not exist to provide profit opportunities to private investors. Investors are much more likely to walk away from their homes in an economic downturn and are responsible for the majority of the fraudulent schemes in FHA programs.

Investors are only a small portion of FHA's business, but a significant source of its financial difficulties. In 1988, investors accounted for only 2.5% of FHA's newly insured mortgages, and roughly 15% of the claims. Most of the defaulting loans were

written in earlier years. One group of private investors in Denver owned 750 homes with insured mortgages, and defaulted on every one of the mortgages.

Under the proposal, private investors would be excluded from FHA insurance of single family homes that they do not occupy. Still accepted would be public purpose investors, such as nonprofit housing providers that intend to rent or sell the homes to low- and moderate-income persons and State and local housing finance agencies. Multi-unit, owner-occupied structures would continue to be permitted, as for example, a family occupying one unit of a duplex while renting out the other.

By this proposal, HUD is not seeking to discourage private investment in housing as a general matter. The reform is rather a recognition that the single family mortgage insurance program should not be exposed to the risks of private speculation.

The amendments made by this proposal are prospective only. They would apply only with respect to—

(1) mortgages insured—

(A) pursuant to a conditional commitment issued on or after the date of the enactment of this Act; or

(B) in accordance with the direct endorsement program (24 CFR 200.163), if the approved underwriter of the mortgagee signs the appraisal report for the property on or after the date of the enactment of this Act; and

(2) the approval of substitute mortgagors, if the original mortgagor was subject to the amendments.

In addition, any mortgage insurance provided under title II of the National Housing Act, as it existed immediately before the date of the enactment of this Act, would continue to be governed (to the extent applicable) by the current provisions of the National Housing Act, as they existed immediately before such date.

LIMITATION ON SECONDARY RESIDENCES IN THE FHA SINGLE FAMILY MORTGAGE INSURANCE PROGRAM

Section 303 would limit the use of secondary residences in the FHA single family mortgage insurance program. Under existing law, an FHA borrower can qualify as an "owner occupant" for more than one home. In addition to a "principal residence" that is the borrower's primary home, he or she can obtain an FHA loan for a "secondary residence" that is occupied for less than half the year. The Department has administratively set a 15% downpayment for "secondary residences."

The most common form of "secondary residence" is a vacation property. These properties are owned by individuals with sufficient wealth to afford an investment property that doubles as a weekend or summer retreat. Since these properties carry a greater likelihood of default and consequent loss to the Insurance Funds, the Department is in effect being asked to assume greater financial risk to support mortgagors' investment objectives and recreational interests. The Department believes that this is an inappropriate use of Federal credit authority, particularly in view of recent announcements concerning the condition of the FHA Insurance Funds.

Accordingly, this proposal would eliminate the Department's authority to insure mortgages covering vacation properties. The Department would continue to insure mortgages covering secondary residence, but only where failure to do so would impose undue hardship on the mortgagor. Examples of such hardship would include where a mortgagor is required to move, but is unable to sell the dwelling that he or she occupied as a principal residence, or where seasonal employment requires a secondary residence.

In section 406(c) of the Housing and Community Development Act of 1987, the Congress repealed section 203(m) of the National Housing Act, an authority that provided mortgage insurance for vacation and seasonal homes. This proposal would complete the policy enunciated in the 1987 Act.

The amendments made by this proposal are prospective only. They would apply only with respect to—

(1) mortgages insured—

(A) pursuant to a conditional commitment issued on or after the date of the enactment of this Act; or

(B) in accordance with the direct endorsement program (24 CFR 200.163), if the approved underwriter of the mortgagee signs the appraisal report for the property on or after the date of the enactment of this Act; and

(2) the approval of substitute mortgagors, if the original mortgagor was subject to the amendments.

In addition, any mortgage insurance provided under title II of the National Housing Act, as it existed immediately before the date of the enactment of this Act, would continue to be governed (to the extent applicable) by the current provisions of the National Housing Act, as they existed immediately before such date.

REQUIRE CREDIT REVIEWS OF PERSONS ACQUIRING FHA MORTGAGED PROPERTIES FOR LIFE OF MORTGAGE

Section 304 would amend section 203(r)(2) of the National Housing Act (NHA) to require lenders to review the creditworthiness, under standards prescribed by HUD, of at least one person seeking to acquire ownership of a one- to four-family residential property encumbered by an FHA mortgage at any time during the life of the mortgage, whether or not such person assumes personal liability under the mortgage (except that acquisitions by devise or descent shall not be subject to this requirement). Section 203(r)(2) currently requires reviews of the credit standing of persons seeking to acquire a property encumbered by an FHA mortgage (1) during the 12-month period following execution of the mortgage, or (2) in the case of an investor-originated loan, during the 24-month period following execution.

This proposal would also permit HUD to require each insured mortgage to contain a due-on-sale provision permitting the mortgage to accelerate the period of time in which a mortgage obligation is due and require repayment of that obligation. Under the proposal, the due-on-sale provision would not be subject to section 341(d)(6) of the Garn-St Germain Depository Institutions Act of 1982. Section 341(d)(6) prohibits the exercise of a due-on-sale provision upon a transfer where the spouse or children or a mortgagor become an owner of the property.

Before enactment of the Housing and Community Development Act of 1987, there was no statutory requirement to verify the creditworthiness of persons seeking to acquire properties encumbered by FHA mortgages. Consequently, defaults by unqualified homebuyers of properties encumbered by FHA mortgages were a costly drain on the FHA mortgage insurance fund. In particular, properties were often sold to investors who made few, if any, home improvements and who then sold the properties to unqualified homebuyers. Many of these buyers subsequently defaulted on the properties while the lenders received mortgage insurance benefits.

The 1987 Act partially remedied this situation by requiring credit checks of any persons seeking to acquire a property burdened by an FHA mortgage (1) during the 12-month period following execution, or (2) in the case of investor-originated loans, during the 24-month period following execution. Defaults by unqualified homebuyers, who purchase properties encumbered by FHA mortgages after the 12- and 24-month time periods, still expose the FHA mortgage insurance funds to unjustified losses. The amendment to section 203(r) would further reduce claims on the FHA insurance funds by ensuring that, at any time during the life of the mortgage, at least one person seeking to acquire property encumbered by an FHA mortgage is creditworthy.

By providing an exemption from section 341(d)(6) of the Garn-St Germain Depository Institutions Act of 1982 to section 203 of the NHA, non-creditworthy relatives would be prevented from acquiring properties encumbered by FHA mortgages. Such transfers are a major method of avoiding application of credit reviews, since the assumption restriction is implemented by including a due-on-sale provision in the mortgage which allows acceleration of the loan upon transfer to a noncreditworthy person. This proposal would also make explicit HUD's authority to require each insured mortgage to contain a due-on-sale provision.

This amendment would also amend the first sentence of section 203(r) to provide that the actions HUD takes under this section to reduce losses applies to all single family programs under title II of the NHA.

Section 203(r)(3) currently requires that the original mortgagor be advised of the procedures for release of liability only if the mortgage is assumed after the 12- and 24-month periods specified in section 203(r)(2). This section contains a technical amendment to section 203(r)(3) which removes the reference to the 12- and 24-month periods of time. Under this amendment, in any case where personal liability under a mortgage is assumed, the original mortgagor would have to be advised of the procedures by which he or she may be released from liability.

The amendments made by this proposal are prospective only. They would apply only with respect to—

(1) mortgages insured—

(A) pursuant to a conditional commitment issued on or after the date of the enactment of this Act; or

(B) in accordance with the direct endorsement program (24 CFR 200.163), if the approved underwriter of the mortgage signs the appraisal report for the property on or after the date of the enactment of this Act; and

(2) the approval of substitute mortgagors, if the original mortgagor was subject to such amendments.

In addition, any mortgage insurance provided under title II of the National Housing Act, as if existed immediately before the date of the enactment of this Act, would continue to be governed (to the extent applicable) by the current provisions of the National Housing Act, as they existed immediately before such date.

REPEAL OF TITLE X

Section 305 would repeal title X of the National Housing Act.

Prior Suspension and Proposed Termination of Title X Program

On June 29, 1989, Secretary Kemp announced HUD's suspension of the title X program. He announced that HUD would discontinue the processing of title X applications that had not received a legally binding commitment by June 29, 1989, and would return application fees. Projects with legally binding commitments issued before June 29, 1989 would be eligible for insurance, subject to a specific examination for evidence of fraud or misrepresentation. On August 11, 1989, HUD published a rule proposing to terminate the program (54 Fed. Reg. 33.039).

Background

Title X of the National Housing Act was added by the Housing and Urban Development Act of 1965. Under the program, HUD is given discretionary authority to insure mortgages for land purchase and development in connection with new subdivisions and new communities. The improvements that may be installed by the developer and financed with the mortgage proceeds include: installations for water lines; water supply; sewage disposal; complete water or sewage systems; and roads, streets, curbs, gutters, sidewalks, and storm drains. Title X projects must be designed for primarily residential use, although a reasonable amount of related nonresidential use is permitted.

Termination of the Title X program is being proposed on the basis of the following factors: the serious adverse financial condition of the program, its inability to meet its statutory goals, the Secretary's judgment that restructuring the program would not be an effective way of correcting these deficiencies, and the fact that its termination would have virtually no effect on the availability of financing for land development across the nation. The following discussion addresses each of the points.

1. Financial Condition of the Title X Program

Title X has proved to be a financial disaster to the Department and to the American people. The program has experienced exceptionally high claim rates, and it has already inflicted massive losses on the Department's insurance fund, with substantial additional losses anticipated. The program is actuarially unsound, a situation that is particularly troublesome since it involves a program that is intended to be self-supporting (see section 1008 of the National Housing Act).

An analysis of the operations of the program from 1977 to October 1988 reveals the following:

Fifty-eight loans were insured under the program (approximately five per year). These mortgages generated $12.5 million in insurance premiums and fees for the fund and were insured for a total of $505,148,309 (approximately $8.7 million per loan).

Claims have been paid on 25 of the 58 loans. This represents a claim rate of 43%. As a point of comparison, the claim rate for the section 221(d) multifamily mortgage insurance program for the period 1974 through 1988 was 9.87% for HUD-processed loans and 17.31% for the section 221(d) coinsurance program.

By October 1988, 13 of the 25 title X projects for which HUD has paid claims since 1977 have been sold, resulting in a total loss to the Federal government of more than $50 million and an average loss of almost $4 million per claim. Losses on the remaining 12 projects have not, as yet, been determined. However, assuming comparable losses upon the disposition of these projects, HUD anticipates a total loss on the 25 claims of approximately $90 million. The ultimate loss will exceed $90 million, since HUD has issued legally binding commitments for a number of projects that are still in the pipeline.

HUD has experienced no significant reduction in title X financial problems despite a number of changes that were instituted between 1983 and 1985 to improve the program.

The Federal government's future losses under the program can only be expected to increase if the program is allowed to continue, since the amounts sought to be insured under individual title X applications are increasing.

Consequently, HUD believes that title X projects will continue to subject the FHA insurance fund to unacceptable financial losses. The continuation of a program that involves such an unacceptably high insurance claim rate is inconsistent with the Department's obligation to manage the FHA insurance fund prudently.

2. Inability to Promote Statutory Purposes

The statute mandates the inclusion of a proper balance of housing for families of low and moderate income (section 1005). However, HUD has been unable to achieve this goal.

The HUD Inspector General draft audit report dated March 31, 1987 reviewed 17 title X projects in three HUD regions that produced 11,300 housing units. These projects collectively were insured for a total of $212 million. The review revealed that only a single project may have provided housing for moderate-income persons, and no project provided housing for families with low incomes.

Housing located on land developed under the program is typically new construction that is designed for sale to prospective homeowners. This type of housing generally costs more than low-income families, and even many moderate-income families, can afford to pay. In addition, undeveloped land suitable for use in the program is generally located in suburban areas, and involves an "upscale" emphasis that is often beyond the reach of even moderate-income families. Thus, the central thrust of title X is away from the very income groups the satute directs the Department to focus upon in administering the program.

3. Restructuring Title X Would Be Ineffective

The private sector currently finances virtually all land development projects without the need for Federal insurance. The Department estimates that between 4,000 and 6,000 subdivisions are developed annually in the United States. By comparison, activity under the title X program since 1977 has averaged only five applications per year. In other words, title X's share of the land development market has averaged only about 0.1% of the national total—an infinitesimal contribution to the total financing for land development.

The Department believes that restructuring the title X program would result in reducing the current five applications per year to zero. Any restructuring of the program would include more rigorous requirements to ensure the participation of small builders and a significant proportion of low- and moderate-income families in the housing ultimately developed. It also would involve stricter underwriting standards and other measures to ensure that insured projects represented a substantially improved mortgage insurance risk. Such changes would virtually end any developer interest in the program. Thus, the only viable approach is to terminate the program.

4. Effect on the Availability of Financing for Land Development

Finally, the termination of title X would have virtually no effect on the availability of financing for land development across the Nation. As indicated above, the private sector finances the overhwelming number of land developments, with title X's share of the market being negligible.

For these reasons, this proposal would terminate the title X program.

Effective Date and Conforming Amendments

No contract of insurance could be entered into under title X on or after the date of enactment, except pursuant to a commitment to insure made before enactment. Any contract of insurance entered into under title X would continue to be governed by title X as it existed before repeal. In view of the suspension of the title X program on June 29, 1989, it is not necessary to provide a transition period.

STREAMLINE PROPERTY DISPOSITION REQUIREMENTS FOR UNSUBSIDIZED MULTIFAMILY HOUSING PROJECTS

Section 306 would amend sections 203 (a) and (d) of the Housing and Community Development Amendments of 1978 to (1) permit HUD to use either tenant-based (vouchers or certificates) or project-based section 8 assistance for units in unsubsidized projects which are occupied by lower income families; and (2) remove the requirement that HUD provide section 8 assistance for the vacant units in such projects. To use tenant-based section 8 assistance, HUD would have to make a determination that there is available in the area an adequate supply of habitable, affordable housing for lower income families. Such a determination would be final and nonreviewable. This determination is the same standard used for similar purposes in connection with the CDBG antidisplacement plan under section 104(d) of the 1974 Act.

Section 203(d) of the 1978 Amendments currently requires HUD (1) to provide 15-year project-based section 8 assistance to multifamily projects that are acquired at a HUD foreclosure or after sale by HUD, or (2) to ensure that for at least 15 years eligible tenants will pay no more in rent than if section 8 were provided. The assistance is required for (1) all units in subsidized or formerly subsidized projects, (2) the units in other (unsubsidized) projects owned by HUD that are occupied by lower income families or are vacant, and (3) the units in all other (unsubsidized) projects that are occupied by lower income families.

This amendment would give HUD needed flexibility to use tenant-based assistance, instead of project-based assistance, in unsubsidized projects where local market conditions clearly indicate that the project is not needed to be maintained to provide lower income housing. HUD could make a determination in soft market areas that there is available an adequate supply of habitable affordable housing for lower income families. Therefore, if the project were not used for lower income purposes following the sale, the lower income tenants receiving the section 8 assistance would be able to find affordable housing in the area. Roughly half

of the projects owned by HUD or for which HUD is mortgagee in possession (53 projects and 8,000 units) are located in the soft market areas of Texas, Oklahoma, Louisiana, and Arkansas. HUD would still be required to provide project-based assistance to all units in subsidized projects or formerly subsidized projects.

This amendment would also remove the requirement that HUD provide section 8 assistance for vacant units in unsubsidized projects sold by HUD. This requirement exposes HUD to a significant obligation of budget authority. It is estimated that there are more than 3,000 vacant units potentially eligible for this assistance, which would represent between $300 to $400 million in budget authority. Obligation of this budget authority for vacant units alone is especially questionable since many of the units are in soft markets where, as discussed above, local market conditions indicate projects do not need to be maintained as lower income housing.

PROHIBIT DEALER AND LOAN BROKER PARTICIPATION IN ORIGINATION OF TITLE I PROPERTY IMPROVEMENT LOANS

Section 307 would amend section 2 of the National Housing Act to prevent certain abuses that have developed under the title I property improvement loan program involving loans originated with the participation of dealers and loan brokers.

Currently, some property improvement dealers or contractors assist their customers in completing and submitting title I property improvement loan applications for the work they do. This is done pursuant to agreements that the dealers have with the financial institutions which finance the loans. Under current statutory authority, financial institutions can purchase advances of credit (retail installment sales contracts with the borrowers) from the dealers.

Some dealers have abused this arrangement by encouraging borrowers to inflate their incomes and/or hide their debts, thereby giving the appearance that the borrowers are creditworthy and qualified for property improvement loans.

Section 2(b)(8), as added by this section, would remove the Secretary's authority to insure advances of credit under the property improvement loan program. The effect of this section is that a borrower would have to apply directly to a lender for his or her loan, and the dealer would have no role in the loan origination process. This would eliminate the dealer's inherent incentive to do what it can to have the financing approved so it can make the sale.

Another area of abuse involves loan brokers. A loan broker assists borrowers in obtaining title I financing for property improvements. A loan broker often works for more than one lender, and has no incentive to obtain the best deal for the borrower; in many cases the loan broker's commission is higher if the borrower pays a higher interest rate. Some loan brokers have advised borrowers that title I property improvement loan proceeds could be used for ineligible items, including swimming pools, and ineligible uses, such as paying for personal expenses and consolidating debts. One loan arranged through a loan broker was used to finance the borrower's divorce, even though the application stated that the loan proceeds would be used for home improvements. A loan broker has essentially the same incentive as dealer, to do what the broker can to have the financing approved, even for a borrower who is not creditworthy, so that the broker can earn a commission from the making of a loan.

Section 2(b)(7), as added by this section, would require financial institutions making title I property improvement loans to certify to the Secretary that no loan broker or other party having a financial interest in the making of the loan or advance of credit provided assistance to the borrower in preparing the loan application or otherwise assisted the borrower in obtaining the loan or advance of credit. Advances of credit are included in this provision, notwithstanding the revocation of the Secretary's authority to insure them contained in section 2(b)(8) because the certification would be required immediately upon enactment, whereas the revocation of the authority to insure advances of credit would become effective 90 days after enactment.

By Mr. DOLE:

S.J. Res. 222. Joint resolution designating 1990 as the "Year of the Eagle Scout"; to the Committee on the Judiciary.

YEAR OF THE EAGLE SCOUT

Mr. DOLE. Mr. President, I rise today to introduce a joint resolution to designate 1990 as the "Year of the Eagle Scout."

Since the founding of the Boy Scouts of America in 1910, the organization has been successful in achieving its purpose: "To promote the ability of boys to become self-sufficient and selfless, to train them in scoutcraft and to instill in them patriotism, courage, self-reliance, and kindred virtues." The rank of Eagle Scout is the highest youth achievement award a Boy Scout can receive. This rank has been conferred on almost 1,200,000 young men. In 1972, the National Eagle Scout Association was established as a means of maintaining contact with these individuals, so their involvement in Scouting and civil responsibility can continue.

I understand that throughout 1990, both the Boy Scouts of America and the National Eagle Scout Association will be involved in a nationwide effort to locate all Eagle Scouts, so the spirit of community leadership can be instilled again in these individuals.

Without a doubt, the values this organization helps to promote among young men are truly honorable. It's not easy in this day and age for young men—or women for that matter—to grow up and make their way in society. We all hear so much about the trouble that today's kids manage to get themselves into—drugs, crime, and dropping out of school. Unfortunately, the list goes on. I'm proud to see that the Boy Scouts of America are still going strong today. Clearly, this group plays an important role in nurturing patriotism, community spirit, and leadership qualities in our youth.

Mr. President, I am proud to introduce this joint resolution, as my counterpart in the other body has already done. I applaud this effort, and hope that my colleagues on both sides of the aisle will join me in supporting and encouraging this worthwhile effort.

Mr. President, I ask unanimous consent that the text of the joint resolution be printed in the RECORD.

There being no objection, the joint resolution was ordered to be printed in the RECORD, as follows:

S.J. RES. 222

Whereas the Boy Scouts of America was granted a national charter on June 15, 1916;

Whereas since its founding in 1910, the Boy Scouts of America has served the people of the United States by fulfilling its purpose to promote, through organization, and cooperation with other entities, the ability of boys to become self-sufficient and selfless, to train them in scoutcraft, and to instill in them patriotism, courage, self reliance, and kindred virtues;

Whereas the Boy Scouts of America has conferred its highest youth achievement award, the Eagle Scout rank, upon nearly 1,200,000 boy scouts;

Whereas in 1972 the Boy Scouts of America established the National Eagle Scout Association as a means to maintain contact with its Eagle Scouts for the purpose of maintaining their involvement in scouting and civil responsibility; and

Whereas during 1990 the Boy Scouts of America and the National Eagle Scout Association will conduct a nationwide search to identify the current location of all Eagle Scouts for the purpose of rededicating them to the tenets of scouting and community leadership: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the year 1990 is designated as the "Year of the Eagle Scout". The President is authorized and requested to issue a proclamation calling on the people of the United States to support the effort of the Boy Scouts of America to locate past Eagle Scouts and to participate in other ceremonies and activities that celebrate Eagle scouting in the United States.

ADDITIONAL COSPONSORS

S. 16

At the request of Mr. CRANSTON, the name of the Senator from North Dakota [Mr. BURDICK] was added as a cosponsor of S. 16, a bill to require the executive branch to gather and disseminate information regarding, and to promote techniques to eliminate, discriminatory wage-setting practices and discriminatory wage disparities which are based on sex, race, or national origin.

S. 667

At the request of Mr. MATSUNAGA, the names of the Senator from Oklahoma [Mr. BOREN] and the Senator from Montana [Mr. BAUCUS] were added as cosponsors of S. 667, a bill to amend the Federal Unemployment Tax Act with respect to employment performed by certain employees of educational institutions.

S. 1109

At the request of Mr. PELL, the names of the Senator from Iowa [Mr. HARKIN] and the Senator from Illinois

[Mr. SIMON] were added as cosponsors of S. 1109, a bill to amend the Carl D. Perkins Vocational Education Act to extend the authorities contained in such act through the fiscal year 1995.

S. 1207

At the request of Mr. PACKWOOD, the name of the Senator from Oregon [Mr. HATFIELD] was added as a cosponsor of S. 1207, a bill to amend the Communications Act of 1934 to reform the radio broadcast license renewal process and for other purposes.

S. 1703

At the request of Mr. BOSCHWITZ, the name of the Senator from Iowa [Mr. HARKIN] was added as a cosponsor of S. 1703, a bill to amend title 38, United States Code, to permit Department of Veterans Affairs medical centers to retain a portion of the amounts collected from third parties as reimbursement for the cost of health care and services furnished by such medical centers.

S. 1753

At the request of Mr. BAUCUS, the name of the Senator from North Carolina [Mr. SANFORD] was added as a cosponsor of S. 1753, a bill to amend the Internal Revenue Code of 1986 to restore income averaging for qualified farmers.

SENATE JOINT RESOLUTION 205

At the request of Mr. BIDEN, the name of the Senator from New York [Mr. MOYNIHAN] was added as a cosponsor of Senate Joint Resolution 205, a joint resolution designating December 3 through 9, 1989, as "National Cities Fight Back Against Drugs Week."

SENATE JOINT RESOLUTION 217

At the request of Mr. WILSON, the names of the Senator from Delaware [Mr. BIDEN] and the Senator from West Virginia [Mr. BYRD] were added as cosponsors of Senate Joint Resolution 217, a joint resolution to designate the period commencing February 4, 1990, and ending February 10, 1990, as "National Burn Awareness Week."

SENATE RESOLUTION 196

At the request of Mr. DECONCINI, the name of the Senator from Washington [Mr. GORTON] was added as a cosponsor of Senate Resolution 196, a resolution expressing the sense of the Senate regarding the peace process in Angola.

SENATE RESOLUTION 200

At the request of Mr. PELL, the names of the Senator from Delaware [Mr. BIDEN], and the Senator from Maryland [Mr. SARBANES] were added as cosponsors of Senate Resolution 200, a resolution expressing the support of the Senate for firm and decisive action by the United States at the upcoming meeting of environmental ministers in the Netherlands on November 6 and 7 in support of a framework convention on climate change.

AMENDMENT NO. 1069

At the request of Mr. SANFORD, the names of the Senator from Virginia [Mr. ROBB] and the Senator from Florida [Mr. GRAHAM] were added as cosponsors of amendment No. 1069.

SENATE RESOLUTION 203—AUTHORIZING SENATE EMPLOYEE TESTIMONY AND PRODUCTION OF DOCUMENTS

Mr. MITCHELL (for himself and Mr. DOLE) submitted the following resolution; which was considered and agreed to:

S. RES. 203

Whereas, in Grand Jury proceeding No. 89-198, pending in the United States District Court for the Eastern District of Pennsylvania, the United States Attorney has requested the testimony of Walter Irvine, special assistant in the Philadelphia office of Senator John Heinz;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate can be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that the testimony of and production of documents by employees of the Senate may be needed in any court for the promotion of justice, the Senate will take such action as will promote the ends of justice consistent with the privileges and rights of the Senate: Now, therefore, be it

Resolved, That Walter Irvine and any other staff assistant of Senator Heinz who may be asked are authorized to testify and produce documents in Grand Jury proceeding No. 89-198 in the Eastern District of Pennsylvania, except concerning matters which are privileged.

AMENDMENTS SUBMITTED

MINTING OF COINS IN COMMEMORATION OF THE GOLDEN ANNIVERSARY OF MOUNT RUSHMORE NATIONAL MEMORIAL

PRESSLER AMENDMENT NO. 1079

Mr. WILSON (for Mr. PRESSLER) proposed an amendment to the bill (S. 148) to require the Secretary of the Treasury to mint coins in commemoration of the golden anniversary of the Mount Rushmore National Memorial, as follows:

On page 4, line 25, strike "beginning on January 1, 1991" and insert "during the period beginning on January 1, 1991, and ending on December 31, 1991".

On page 5, beginning with "and" on line 3, strike all through "Mint" on line 4.

On page 7, lines 2 and 3, strike ", the Federal Savings and Loan Insurance Corporation".

NATIONAL NUTRITION MONITORING AND RELATED RESEARCH PROGRAM

DOLE AMENDMENT NO. 1080

Mr. WILSON (for Mr. DOLE) proposed an amendment to the bill (S. 253) to establish a coordinated National Nutrition Monitoring and Related Research Program, and a comprehensive plan for the assessment of the nutritional and dietary status of the U.S. population and to nutritional quality of food consumed in the United States, with the provision for the conduct of scientific research and development in support of such program and plan, as follows:

On page 20, strike out lines 6 through 20.

On page 20, line 21, strike out "(d)" and insert in lieu thereof "(c)".

On page 20, line 25, insert before the period "and shall include a State or local government employee with a specialized interest in nutrition monitoring".

On page 21, line 1, strike out "(e)" and insert in lieu thereof "(d)".

On page 21, line 6, strike out "(f)" and insert in lieu thereof "(e)".

On page 21, line 16, strike out "(g)" and insert in lieu thereof "(f)".

On page 21, line 19, strike out "(h)" and insert in lieu thereof "(g)".

On page 21, line 23, strike out "(i)" and insert in lieu thereof "(h)".

On page 22, line 3, strike out "(j)" and insert in lieu thereof "(i)".

On page 22, line 6, strike out "(k)" and insert in lieu thereof "(j)".

NOTICES OF HEARINGS

SPECIAL COMMITTEE ON AGING

Mr. PRYOR. Mr. President, I would like to announce for the public that the Senate Special Committee on Aging has scheduled a hearing for Wednesday, November 15, 1989, in room 628, Dirksen SOB beginning at 10 a.m.

The hearing will focus on how the drug crisis is affecting the elderly, particularly poor and minority elderly in both urban and rural settings.

For further information, please contact Portia Mittelman, staff director, at (202) 224-5364.

SELECT COMMITTEE ON INDIAN AFFAIRS

Mr. INOUYE. Mr. President, I would like to announce that the Select Committee on Indian Affairs will be holding a markup on Thursday, November 9, 1989, beginning at 11 a.m., in 485 Russell Senate Office Building on S. 1096 (S. 1336), to provide for the use and distribution of funds awarded the Seminole Indians; S. 1270, to provide an Indian mental health demonstration grant program; S. 1526, to authorize the State of Oklahoma and the Kiowa, Comanche, and Apache Tribes to enter into an agreement regarding the exercise of State jurisdiction over a portion of Indian country located in Comanche County, OK; S. 1781, the

Native American Language Act; S. 1783, to regulate Indian child protection and prevent child abuse on Indian reservations and S. 1813, to ensure that funds provided under section 4213 of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 may be used to acquire land for emergency shelters.

Those wishing additional information should contact the Select Committee on Indian Affairs at 224-2251.

Mr. President, I would like to announce that the Select Committee on Indian Affairs will be holding a hearing on Tuesday, November 14, 1989, beginning at 9:30 a.m., in 485 Russell Senate Office Building on Indian veterans.

Those wishing additional information should contact the Select Committee on Indian Affairs at 224-2251.

AUTHORITY FOR COMMITTEES TO MEET

SUBCOMMITTEE ON WATER RESOURCES, TRANSPORTATION AND INFRASTRUCTURE

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Subcommittee on Water Resources, Transportation, and Infrastructure, Committee on Environment and Public Works, be authorized to meet during the session of the Senate on Friday, November 3 to conduct a general oversight hearing regarding the public buildings program of the General Services Administration.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON INTERNATIONAL TRADE

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Subcommittee on International Trade of the Committee on Finance be authorized to meet during the session of the Senate on November 3, 1989, at 11:30 a.m. to hold a hearing on the administration's efforts to extend international trading rules to agriculture in the Uruguay round of GATT negotiations.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. MITCHELL. Mr. President, I ask unanimous consent that the full committee of the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate, November 3, 1989; 9:30 a.m. for a hearing to consider the following nominations: Martin Lewis Allday to be a member of the Federal Energy Regulatory Commission; Melva Anne Gibson Ray to be Director, Office of Minority Impact, Department of Energy; and William Harold Young to be Assistant Secretary for Nuclear Energy, Department of Energy.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

HONORING MIDWAY AIRLINES' 10TH ANNIVERSARY

● Mr. DIXON. Mr. President, I rise today to honor Midway Airlines, a great American corporation based in the State of Illinois as they celebrate their 10th anniversary as one of America's premier airlines.

From its November 1, 1979, inaugural flight, Midway Airlines has played an integral part in the renaissance of Chicago's Midway Airport and has given the Windy City two fine airports. The airline's humble story began on that November day with only three airplanes and with service to only three cities operating out of a deserted airport considered by many to be a relic of the past with the rise of O'Hare Field. However, from that simple beginning, under the capable leadership of founding chairman Irving T. Tague and current chairman and CEO David Hinson, Midway Airlines has rapidly expanded its fleet and service to its current status of serving over 50 cities all over America while being chiefly responsible for the renaissance of one our Nation's most storied airports.

Midway Airlines has made a smooth transition from regional carrier to one of the Nation's most prominent airlines. It has established itself among the leaders in the airline industry with their stellar safety record over their first decade. Also, Midway Airlines' reputation as one of the Nation's most reliable airlines was confirmed with their No. 1 ranking by the Department of Transportation's July report on consumer complaints.

As Midway Airlines enters their second decade, the carrier is expanding in an unprecedented manner. This month will see the opening of a second hub located at Philadelphia International Airport. The Philadelphia opportunity will allow Midway to bring their unique brand of Chicagoan service and value to a whole new market of air travelers. The 1990's also promise to see Midway Airlines to reach out across the world as plans to make Midway Airlines a truly international airline takes place.

I expect the future to bring nothing but continued success for Chicago's homegrown airline. Their contributions to Chicago and the entire State of Illinois is immeasurable and is appreciated by all Illinoisans. I consider it an honor and a privilege to represent the home State of such a fine corporation and most importantly, the thousands of Illinoisans that comprise the outstanding work force at Midway Airlines.●

RETIREMENT PAY OF CERTAIN MEMBER OF THE ARMED FORCES

● Mr. DURENBERGER. Mr. President, last night, the U.S. Senate voted 78 to 17 to approve S. 1816 dealing with "pensions of certain retired military officers." As the record will show, I voted against the measure, and I would like to comment on that vote now.

First, let me state unequivocally that my vote against S. 1816 in no way contradicts my admiration of Lieutenant Colonel North's war record. He served with valor, courage, and extraordinary distinction in the Vietnam war. He is highly decorated for that service, including two Purple Hearts, the Silver Star, the Bronze Star, Navy Commendation Medals, and others. He served with distinction for 20 years in the U.S. Armed Forces.

Notwithstanding this laudable war record, Oliver North was convicted of three felony crimes—shredding Government documents, impeding a congressional investigation, and accepting an illegal gratuity. While on the National Security Council, Oliver North not only broke the law and was convicted for it, he violated the special trust and confidence of the American peopie in our system of government.

Much of the supporting argument for this bill has focused on correcting an inequity in the law concerning the pension payments of military and civilian personnel. I don't dispute at all that there is an inequity in the law. The law must be clarified as to what offenses require the penalty of denying penion. It is not fair that document shredding should carry the same penalty as treason or murder; or that civilian and military personnel should be treated differently. The point of the matter is, however, that if such a discrepancy exists, it should be resolved outside the emotionally charged atmosphere that surrounds Lieutenant Colonel North. It should be resolved only after careful and thoughtful deliberations considering the legal history and the implications for future cases any modifications would have.

If this measure is intended only to correct a problem with the law, one can reasonably ask why is it being discussed now? It seems that S. 1816 is a private bill for the relief of Oliver North, masquerading as an attempt to clarify an unclear law.

In closing, Mr. President, let me reiterate my belief that Oliver North served his country admirably and with uncommon valor in Vietnam. No matter what the resolution of his pension, no one can deny that. But his war record and his criminal conviction are separate matters. For that reason, I believe Lieutenant Colonel North should be subject to the law that re-

quires that his pension be withheld, and I voted as such last evening.●

CONTINUING ABUSE OF THE RECLAMATION PROGRAM

● Mr. BRADLEY. Mr. President, in December 1987, we enacted legislation to stop certain abuses of the Federal Reclamation Program. At that time, I stated my support for that legislation, but I advised this Chamber, the Department of the Interior, and certain water users that the issue was far from over. Mr. President, as I feared, the issue was not concluded; it is abundantly clear now that the abuse of the Reclamation Program has continued despite the 1987 legislation.

As chairman of the Subcommittee on Water and Power of the Committee on Energy and Natural Resources, I convened an oversight hearing in California this August on the Reclamation Program in that State. Testimony from several witnesses and other information provided to the subcommittee reveals that the Department of the Interior is failing to meet Congress' intent in implementation of the Reclamation Reform Act of 1982, as amended in 1987.

Congress established the Federal Reclamation Program at the turn of the century to provide inexpensive water to small farmers in the arid West. Congress hoped to promote settlement and support rural economies. For the most part, the Reclamation Program worked well, but over the years, it fell victim to abuses.

Mr. President, as my colleagues will recall, Congress amended the reclamation law twice this decade to stop abuses. Despite congressional reforms, the Department of the Interior this summer approved a project to deliver cheap, taxpayer-subsidized water to a 23,000-acre, 36-square-mile, multimillion-dollar agribusiness operation in California. It appears that the Interior Department approved other similar projects.

The Secretary of the Interior has ample discretion to stop these practices. He knows that the Congress did not intend to see the Reclamation Program used this way.

Mr. President, if the Secretary does not promptly investigate and eliminate these abuses, I will urge the Congress to act again to insure that the reclamation project is properly used.●

DRUG PARAPHERNALIA

● Mr. COATS. Mr. President, the drug paraphernalia business is a multimillion-dollar industry that is a spinoff from the billion-dollar drug trade. The drug paraphernalia business is a perverse means of profiting from the addictive despair of drug abuse and it should be stopped permanently.

In the 1986 Anti-Drug Abuse Act (section 1822, page 100 Stat. 3207.51), we took action against this perverse trade by outlawing the interstate sale, import and export of drug paraphernalia. We defined drug paraphernalia so as to not prohibit those who are selling genuine tobacco products from making their honest living. But we did not outlaw the trade in drug paraphernalia altogether. What I seek to do in this bill is outlaw the business completely. It is time to put this adjunct of the drug trade out of business.

I do not seek to put licensed tobacconists and tobacco distributors out of business. I simply seek to amend the 1986 Anti-Drug Abuse Act, to prohibit the sale of drug paraphernalia altogether. It should not be imported, exported, sold across State lines, or sold at all. The exceptions in existing law for legitimate dealers of tobacco products will remain as they are.

However, I also seek to move beyond this to subject those who traffic in drug paraphernalia to the same asset forfeiture proceedings that drug traffickers can face. Several States have enacted such laws and it's time that the Federal Government act in kind. My bill will force the forfeiture of any profits or proceeds that the court determines were acquired or maintained as a result of trafficking in drug paraphernalia.

Any such profits or proceeds that are forfeit will be transferred to the State government in which the offense was committed.

I urge adoption of this bill because it is time to stand up and say that we will not tolerate businesses that thrive on the trade of illicit drugs. Spinoff industries like the drug paraphernalia business are simply unacceptable.●

DEMOCRACY IN PAKISTAN

● Mr. DECONCINI. Mr. President, over the last week, the new democracy of Pakistan has been in the grips of a constitutional crisis, with the combined opposition challenging the government of Prime Minister Benazir Bhutto in a no-confidence motion before the National Assembly. As one who has worked hard for the restoration of democracy to Pakistan after 11 years of military dictatorship, I am pleased that the Prime Minister not only received a vote of confidence in Parliament, but that she and her government emerged from this test strengthened by the experience. This important test of the parliamentary system in Pakistan has also strengthened the respect for constitutional principles upon which democracies are based.

New democracies are emerging all over the world, and the United States has justifiable pride in the victory of freedom over autocracy and dictatorship. We also must be aware that new democracies going through the difficult transition from dictatorship need time, help, and assistance in the critical early years as their new political systems evolve and strengthen. Nowhere is this more true than in Pakistan. For over 40 years, Pakistan, has existed as an independent nation more often than not under dictatorships. In 1988, Benazir Bhutto, after a long and bruising struggle, led her Pakistan People's Party to a convincing election victory, demonstrating broad national strength across Pakistan's four provinces. Since that time, the opposition alliance, many of whom were associated with the previous regime, have made the new Prime Minister's task difficult. Despite the political situation in Parliament, Ms. Bhutto has accomplished a remarkable transformation of the Pakistani civil and political culture—opening up the country to democracy, self-expression, a free press, free labor unions, student associations, and an end to all vestiges of the martial law regime. She has simultaneously reordered the internal domestic priorities of her country by shifting badly needed resources to the social sectors while maintaining a strong national defense and a consistent policy of support for the Mujahidin in Afghanistan. During this year of political testing, Benazir Bhutto has also provided for the well-being of almost 4 million Afghan refugees living on her soil. In this first year, she has accomplished a great deal and and she has much of which to be proud.

With the constitutional test behind her, and with her clear victory in the National Assembly, the election results of 1988 have been reaffirmed. It is now time for all Pakistanis to rally to the side of a unified and confident Pakistan, and to work with the Prime Minister to address the long-neglected problems of the people. We hope the Bush administration will do everything within its power to support and assist the continuing transition to democracy in Pakistan.

Benazir Bhutto has been a strong friend of the United States. She has earned the support of our Nation as this fledgling democracy evolves and strengthens. I congratulate the Pakistani people for their commitment to this process, and I send my best wishes to Prime Minister Bhutto.●

OLLIE NORTH

● Mr. KERRY. Mr. President, in this period when the public is rightly demanding higher standards of accountability of those in public service, we should be toughening penalties for those who violate the public's trust, not relaxing them.

If the courts find the current law is ambiguous on the question of whether or not retired military officers convict-

ed of destroying public documents are entitled to their pensions, let us change it. Let us make it perfectly clear that they will not receive their pension. At the same time we should consider whether retired civilians and reserve officers, having committed the same crime should not also lose their pensions.

The question is not should we show compassion toward Oliver North. He is doing quite well financially, earning up to $25,000 per speaking appearance.

The issue is what is the responsible action for the Senate to take in carrying out its responsibility to protect the Constitution.

On this question, I believe what is required of us is clear. We must not permit a further eroding of the ethical standards and their legal underpinnings—in fact we must move to make them even higher. This is particularly true when we are dealing with a case and an individual that is so well known to the American people. If we change the rules or bend the rules to favor this convicted felon, the public can rightfully be expected to lose just a little bit more of its faith in the fairness and integrity of our constitutional democracy.

Mr. President, Ollie North was a hero in Vietnam and for that we owe him our respect and gratitude. But Ollie North became a felon in the White House who seriously undermined the foundations of democracy and freedom about which he always spoke so eloquently and for that he must be condemned.

The Senate should take no action that would suggest to the public that what Ollie North did was less serious and dangerous to our democracy than it was. And, the Senate should take no action that does not strengthen the incentives for honesty and integrity in government and increase the penalties.

The General Accounting Office review of the Ollie North pension issue concluded that the law while ambiguous appeared to prevent his eligibility for it. I can understand the sentiment of those who would amend the law and clarify it here on the floor. However, if we are to take that route we should strengthen and extend the loss of pension provision for all public officals who illegally shred public documents, not weaken the law by exempting one more class of public officials from this penalty.

But, I believe we should handle this entire matter in the normal constitutional prescribed manner. If Mr. North rejects the GAO decision, which he has every right to do, he has an obvious right to go to court to press his claim. I would support a sense of the Senate resolution urging the court to expedite its decision on this issue. If the court finds this law ambiguous, then it is incumbent upon us to clarify it. After due congressional consideration, including public hearings, we should then consider exactly whom and under what conditions convicted public document shredders should or should not lose their pensions. This is the normal process for dealing with such an issue and I believe that we make a serious mistake if we make an exception for Oliver North.●

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following nominations: Calendar item Nos. 458, 459, 460, 461, 462, 463, 464, 466, 467, 468, 469, 471, 472, 473, and all nominations placed on the Secretary's desk in the Foreign Service.

I further ask unanimous consent that the nominees be confirmed, en bloc; that any statements appear in the RECORD as if read; that the motions to reconsider be laid upon the table, en bloc; that the President be immediately notified of the Senate's action; and that the Senate return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nominations considered and confirmed en bloc are as follows:

DEPARTMENT OF STATE

Chas. W. Freeman, Jr., of Rhode Island, a career member of the Senior Foreign Service, class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Kingdom of Saudi Arabia.

Luigi R. Einaudi, of Maryland, to be the permanent Representative of the United States of America to the Organization of American States, with the rank of Ambassador.

William Clark, Jr., of District of Columbia, a career member of the Senior Foreign Service, class of Minister-counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to India.

Smith Hempstone, Jr., of Maryland, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Kenya.

Keith Leveret Wauchope, of Virginia, a career member of the Senior Foreign Service, class of Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Gabonese Republic and to serve concurrently and without additional compensation as Ambassador Extraordinary and Plenipotentiary of the United States of America to the Democratic Republic of Sao Tome and Principe.

Francis Terry McNamara, of California, a career member of the Senior Foreign Service, class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Cape Verde.

R. James Woolsey, of Maryland, for the rank of Ambassador during his tenture of service as United States Representative to the Negotiation on Conventional Armed Forces in Europe (CFE).

The following-named career member of the Senior Foreign Service, class of Career Minister, for the personal rank of Career Ambassador in recognition of especially distinguished service over a sustained period: Terence A. Todman, of the Virgin Islands.

U.S. INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Reginald J. Brown, of Virginia, to be an Assistant Administrator of the Agency for International Development.

UNITED NATIONS

The following-named person to be a Representative of the United States of America to the 44th session of the General Assembly of the United Nations: Sam Gejdenson, of Connecticut.

The following-named person to be a Representative of the United States of America to the 44th session of the General Assembly of the United Nations: Christopher H. Smith, of New Jersey.

THE JUDICIARY

George W. Lindberg, of Illinois, to be U.S. district judge for the Northern District of Illinois.

DEPARTMENT OF JUSTICE

Donald Belton Ayer, of Virginia, to be Deputy Attorney General.

K. Michael Moore, of Florida, to be Director of the U.S. Marshals Service (new position).

NOMINATIONS PLACED ON THE SECRETARY'S DESK IN THE FOREIGN SERVICE

Foreign Service nominations beginning Peter G. Frederick, and ending James F. Bermingham, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of October 4, 1989.

Foreign Service nominations beginning Walter G. Bollinger, and ending Dennis C. Zvinakis, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of October 11, 1989.

Foreign Service nominations beginning Elinor Greer Constable, and ending H. Thomas Wiegert, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of October 17, 1989.

STATEMENT ON THE NOMINATION OF GEORGE W. LINDBERG

Mr. SIMON. Mr. President, I rise today to recommend to the Senate the nomination of George W. Lindberg to be U.S. district court judge for the Northern District of Illinois. I have known George Lindberg for 22 years and I have found him to be a person of ability and integrity, two important qualities in a judge.

George Lindberg has spent many years serving the people of Illinois: as a State representative, State comptroller, deputy attorney general in the Illinois Attorney General's office, and now as a justice in the Illinois Appellate Court. He has demonstrated his commitment to help the disadvantaged and his compassion for the less fortunate.

Justice Lindberg has received high praise from those acquainted with his work. I ask unanimous consent to print in the RECORD two letters of support for Justice Lindberg from U.S. District Judge Richard Mills and from

former Illinois Appellate Court Justice John J. Sullivan. These letters illustrate the support and praise Justice Lindberg has received.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

U.S. DISTRICT COURT,
CENTRAL DISTRICT OF ILLINOIS,
Springfield, IL, October 11, 1989.

Hon. JOSEPH R. BIDEN,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The President recently nominated my good friend, Justice George W. Lindberg, to be a United States District Judge, Northern District of Illinois, and I understand that your committee will conduct a hearing on that nomination in the near future. If it is not inappropriate, I would simply like to relay my strong support for Judge Lindberg's confirmation.

George and I have been friends for 20 years, encompassing the entire time that he was State Representative, State Comptroller, Deputy Attorney General, and the over 10 years he has served on the Appellate Court of Illinois. George's integrity and ethics are simply above reproach.

Having served on the Illinois Appellate Court myself for nearly nine years before taking this bench, I had extensive contact with Judge Lindberg. It is in that particular context that I am directly acquainted with his high degree of professional and judicial competency and am familiar with the fact that he has revi wed several thousand trial court records in the course of his appellate service. He is highly regarded by the bar and bench in Illinois—trial and appellate—for solid and scholarly work.

I wish him well before your committee, which was so gracious to me in July 1985. And I will welcome Judge Lindberg as a superlative colleague on the federal trial court.

Thank you for the opportunity of conveying these thoughts, and with every best wish, I remain.

Respectively yours,
RICHARD MILLS,
U.S. District Judge.

CHICAGO IL,
October 10, 1989.

Re Justice George W. Lindberg.

Hon. JOSEPH BIDEN,
Chairman, Committee on Judiciary, U.S. Senate, Washington, DC.

DEAR SENATOR BIDEN: Justice George W. Lindberg of the Appellate Court of Illinois, who is under consideration for appointment to the U.S. District court for Northern Illinois and will soon appear before the Judiciary Committee is, in my opinion, eminently well qualified for service on that court.

I have taken the liberty of giving my opinion because of my belief that I may be the only person or, in any event, one of only a few persons, in this area having the professional background to evaluate fairly the qualifications of Justice Lindberg.

Licensed in 1937 I was an active trial lawyer until 1973 handling many hundreds of legal matters in the State and Federal Courts, both jury and non-jury, with considerable success, not only materially, but also in attaining the respect of my contemporaries as evidenced by my election to the presidencies of both the Chicago Bar Association and the Illinois Trial Lawyers Association, as well as to Fellowships in both the American College of Trial Lawyers and the International Academy of Trial Lawyers.

In 1973 two justices of the Illinois Supreme Court informed me that their court desired to appoint an experienced trial lawyer to the Appellate Court to fill a vacancy and I was asked to consider such an appointment. I accepted and was appointed in 1973. Then in 1974 I was slated by the Democratic Party and elected to that court, serving until my retirement in 1988.

Senator Biden, although Justice Lindberg is held in unquestioned high regard by the legal profession in Illinois, I have learned that while a "substantial majority" of the ABA Committee found him qualified, a minority expressed concern about his lack of trial experience. I believe that such concern is unjustified and indicates a lack of knowledge concerning the work of the Appellate Court.

In his 11 years on the Illinois Appellate Court Justice Lindberg authored hundreds of opinions and participated in the hundreds of opinions of the other members of their three-justice panel. This work entailed the examination and review of the trial records in those cases and, as you know, their decisions guide and control the work of the trial judges and the attorneys appearing before them. This is particularly so in Illinois where approximately 94% of the appeals end in the Appellate Court.

Senator Biden, I am the only person in this area who served as an Appellate justice and who is also a Fellow of the American College of Trial Lawyers and the International Academy of Trial Lawyers, and it would thus appear that I may be the person best qualified by experience to suggest to you that there is no person better trained to sit as a trial judge than one who for many years has reviewed the work of trial judges, such as Justice Lindberg has done these past 11 years.

Please accept my apology if this letter is an intrusion on your busy schedule, but my interest in the best possible judiciary compelled me to express my opinion in the hope that the District Court here will not be deprived of such an outstanding jurist as Justice Lindberg has been and will continue to be.

Thanks in advance for the courtesy of your consideration of my comments.

Sincerely,
JOHN J. SULLIVAN.

Mr. SIMON. Mr. President, in addition, Justice Lindberg has received the full support of the senior Senator from Illinois, ALAN DIXON and the minority leader of the other body, BOB MICHEL.

I hope that the Senate will act favorably on this nomination. I am confident that Justice Lindberg will quickly be an asset to the northern district of Illinois.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to legislative session.

MORNING BUSINESS

Mr. MITCHELL. Mr. President, I ask unanimous consent that there be a period for morning business with Senators permitted to speak therein.

The PRESIDING OFFICER. Without objection, it is so ordered.

AUTHORIZING TESTIMONY OF SENATE EMPLOYEE

Mr. MITCHELL. Mr. President, I send a resolution to the desk on behalf of myself and the distinguished Republican leader, Senator DOLE, on testimony by a Senate employee and production of Senate documents and ask for its immediate consideration.

The PRESIDING OFFICER. The resolution will be stated by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 203) authorizing a Senate employee's testimony and production of Senate documents in a grand jury investigation.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

Mr. MITCHELL. Mr. President, a grand jury sitting in the U.S. District Court of the Eastern District of Pennsylvania is investigating allegations of fraud with respect to an individual, not a Senate employee, who held himself out to foreign nationals as able to obtain expedited visa status. In that regard, the U.S. attorney has requested the testimony of Skip Irvine, one of Senator HEINZ's staff assistants in the Senator's Philadelphia office, who has been cooperating with the investigation.

This resolution would authorize Mr. Irvine to appear before the grand jury and to provide a copy of a memorandum he wrote concerning the matter.

Mr. President, I urge adoption of the resolution.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 203) was agreed to.

The preamble was agreed to.

The resolution and its preamble are as follows:

S. RES. 203

Whereas, in Grand Jury proceeding No. 89-198, pending in the United States District Court for the Eastern District of Pennsylvania, the United States Attorney has requested the testimony of Walter Irvine, special assistant in the Philadelphia office of Senator John Heinz;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate can be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that the testimony of and production of documents by employees of the Senate may be needed in any court for the promotion of justice, the Senate will take such action as will promote the ends of justice consistent with the privileges and rights of the Senate: Now, therefore, be it

Resolved, That Walter Irvine and any other staff assistant of Senator Heinz who may be asked are authorized to testify and produce documents in Grand Jury proceeding No. 89-198 in the Eastern District of Pennsylvania, except concerning matters which are privileged.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

GEORGE THOMAS MICKEY LELAND FEDERAL BUILDING

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 3318, a bill to redesignate the Federal building at 1990 Smith Street, Houston, TX, as the George Thomas "Mickey" Leland Federal Building now at the desk.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 3318) redesignating the Federal building in Houston, Texas, known as the Concorde Tower, as the "George Thomas Mickey Leland Building."

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. BENTSEN. Mr. President, I am pleased with the Senate's action today. When my colleague from Texas, Senator GRAMM, and I introduced this legislation to name a building in downtown Houston after the late Representative Mickey Leland, we asked the Senate to move it quickly. The Senate kept its word, and we now join with Mickey's House colleagues from Texas and the whole House in honoring his memory. This legislation, which will go directly to the President's desk because it has already passed the House, is simple. It names a building in downtown Houston, Mickey's district, after him. The building is owned by the Federal Government, but it had never been given a name. The action we take today is simple. It is easy to understand. But it has a far deeper meaning than what appearances provide. In naming this building after the late Congressman Leland, we honor his memory and we pay tribute to the fine work he did as a Represenative in the U.S. House of Representatives. In many ways, he represented the very finest of our country and what it stands for. He grew up in a poor section of Houston. Yet, he did not allow that slower start in life to dim his enthusiasm for achievement. In many of the eulogies of Mickey Leland, he was called a "long distance runner." I believe that is what he was, and he ran from the ghettos of Houston to the halls of Congress.

By taking this action today, we take a symbolic step. We posthumously award the long distance runner. Mr. President, I miss Mickey Leland. I miss his wit and humor, his strong voice against oppression, and his able leadership in the House on many issues of importance to Texas and the people of the 18th Congressional District. Of course, the most enduring tribute to Mickey will be if we as a nation redouble our efforts to eradicate hunger and homelessness here and abroad; that we as a nation come together to rid our communities of the scourge of drugs; that the cancer of hatred and intolerance no longer inflict us and poison the minds of our young. Then too, he would want the war-torn nation on whose soil he paid the ultimate price, in the words of the prophet Isaiah, "to turn its swords into plowshares" and study war no more. We can build a monument to his short, but well-lived life by remembering the purpose of the mission he was on when he left us through our deeds and acts of generosity. If we do that, we not only honor him and his memory, but we also pay tribute to our own capacity to appreciate others, to celebrate uncommon genius, and to reward public service.

In a few days, there will be an election in Houston to fill his remaining term of office. Whoever succeeds this man we called Mickey will surely have big shoes to fill and an important legacy to continue.

Mr. BURDICK. Mr. President, I am pleased to join in dedicating the Concorde Tower in Houston in honor of our late colleague, Mickey Leland. This is a most fitting tribute to a man who so selflessly dedicated his life to public service.

Congressman Leland was first elected to Congress in 1978 and remained for the entire 10 years he served here a maverick who steadfastly voted his conscience. He played an integral part in the formation of the House Select Committee on Hunger and served as its chair since its inception in February 1984. In 1985, at the height of the African famine, he secured over three-quarters of a billion dollars in relief funds. His humanitarian efforts focused on the domestic front also; he visited Indian reservations and Appalachian communities as well as African relief camps. Mickey Leland was born poor, and although he enjoyed success in his later years he maintained a deep compassion for those less fortunate.

Mickey Leland was a staunch supporter of Israel and sponsored an internship program under which American blacks and Hispanics were given the opportunity to study on an Israeli kibbutz.

Although the late Congressman was intractable in his commitment to combat hunger and unerringly loyal to his friends and family, he was willing to admit to making a mistake—an uncommon trait in a politician.

Those of us in Congress who had the opportunity to serve with Mickey Leland were indeed fortunate. The designation of this Federal building in honor of the late Congressman, who would have celebrated his 45th birthday later this month, will demonstrate the affection and respect with which he was regarded by his colleagues.

THE "MICKEY LELAND FEDERAL BUILDING"

Mr. MOYNIHAN. Mr. President, as chairman of the subcommittee that reviews such matters, I rise to express my strong support for H.R. 3318, to rename the Concord Building on Smith Street in Houston as the "Mickey Leland Federal Building." In so doing, Mickey Leland will be honored for being a true public servant. Indeed, he served those who very often needed help most—the poor, the hungry, the homeless.

Mickey Leland was a leader of compassion, strength and vision. He viewed his mission as a worldwide one and sought to be an advocate, in his own words, "in any part of the world where people are desperate and hungry for the freedoms and rights they deserve as human beings."

As chairman of the House Select Committee on Hunger, Congressman Leland worked tirelessly for the hungry. He did not forget the effects of famine in Africa when it stopped being reported in the national media. Quite the opposite. Furthermore, Mickey Leland saw the hunger and impoverishment that exist in our own Nation and made it his mission to combat these dark realities.

As was recently stated in the Congressional Quarterly, in Mickey Leland "the Nation discovered a Congressman sacrificing his time, and ultimately his life, for a personal mission of mercy."

Mr. President, it is with great admiration and deep respect, that I lend my unqualified support to the redesignation of the Concord Building in Houston, Mickey Leland's home, as the "Mickey Leland Federal Building."

If I may, I also send a message of affection and regard to Mickey's widow, Alison, and their young son Jarrett.

The PRESIDING OFFICER. The bill is before the Senate and open to amendment. If there be no amendment to be offered, the question is on the third reading and passage of the bill.

The bill (H.R. 3318) was ordered to a third reading, was read the third time, and passed.

Mr. MITCHELL. I move to reconsider the vote by which the bill was passed.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

THE CALENDAR

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar Nos. 334, 338, 339, and 340 en bloc; that the committee amendments, where appropriate, be agreed to; that the bills and resolution be deemed read a third time and passed; that the preamble be agreed to, and motions to reconsider the passage of the bills and resolution be laid upon the table.

I further ask unanimous consent that the consideration of these items appear individually in the RECORD.

I further ask unanimous consent that any statements in reference to these calendar items appear at the appropriate place in the RECORD, as if read.

The PRESIDING OFFICER. Without object, it is so ordered.

COMMUNITY FOUNDATION WEEK

The Senate proceeded to consider the joint resolution (H.J. Res. 425), designating November 12 through November 18, 1989, as "Community Foundation Week."

The joint resolution was ordered to a third reading, read the third time, and passed.

THE 82D AIRBORNE DIVISION ASSOCIATION, INC.

The Senate proceeded to consider the bill (S. 82) to recognize the organization known as the 82d Airborne Division Association, Inc.

Mr. THURMOND. Mr. President, I am pleased that the Senate is considering today, S. 82, a bill to grant a Federal charter to the 82nd Airborne Division Association. S. 82 currently has the bipartisan support of 52 cosponsors and the companion legislation on the House side has 224 cosponsors. On October 5, 1989, this legislation passed the Senate as an amendment to S. 1711, a bill to implement the President's 1989 national drug control strategy. Also, identical legislation which I introduced last Congress passed the Senate with 55 cosponsors.

The 82d Airborne Division was activated initially as an infantry division which participated in three of the major campaigns of World War I: Lorraine, St. Michiel, Meuse-Argonne. On May 27, 1919, the 82d Airborne was inactivated. The division was reactivated on March 25, 1942, under the command of Maj. Gen. Omar Bradley and became the Army's first airborne division under the command of Maj. Gen. Matthew B. Ridgway. Deployed to North Africa in 1943, the 82d made parachute and glider assaults on Sicily and Salerno. In a 2-year period during World War II, the regiments of the 82d saw action in Italy at Anzio, in France at Normandy, where I landed with them, and at the Battle of the Bulge.

Following the end of the war, the sky soldiers of the 82d were ordered to Berlin to serve as "America's Guard of Honor" for 5 months of 1945. Due to logistical problems associated with the servicing of an airborne division overseas, the division returned to the United States where it was greeted with a New York City tickertape reception as it marched triumphantly on Fifth Avenue, on January 12, 1946.

The division was assigned to Fort Bragg, NC, to become a leading element of the Nation's military reaction force as well as to participate in a number of peacekeeping missions. Elements of the division have valiantly served in Korea, the Dominican Republic, Vietnam, and Grenada. Peacekeeping units have served in Sinai.

Designed to move quickly to any part of the world and to be prepared to fight immediately upon arrival, the members of the 82d Airborne have served with distinction for over 45 years. They have demonstrated a tireless commitment to our Nation's defense and ideals. Therefore, I can think of no other military association more deserving of the recognition given by Congress in the granting of a Federal charter. I urge my colleagues to join me in supporting the passage of this measure to grant such a charter to the 82d Airborne Division Association.

The bill (S. 82) was considered, ordered to be engrossed for a third reading, read the third time, and passed; as follows:

S. 82

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

CHARTER

SECTION 1. The 82nd Airborne Division Association, Incorporated, a nonprofit corporation organized under the laws of the State of Illinois, is recognized as such and is granted a Federal charter.

POWERS

SEC. 2. The 82nd Airborne Division Association, Incorporated, (hereinafter in this Act referred to as the "corporation") shall have only those powers granted to it through its bylaws and articles of incorporation filed in the State or States in which it is incorporated and subject to the laws of such State or States.

OBJECTS AND PURPOSES OF CORPORATION

SEC. 3. The objects and purposes of the corporation are those provided in its articles of incorporation and shall include—

(1) perpetuating the memory of members of the 82nd Airborne Division who fought and died for our Nation,

(2) furthering the common bond between retired and active members of the 82nd Airborne Division,

(3) providing educational assistance in the form of college scholarships and grants to the qualified children of current and former members,

(4) promoting civic and patriotic activities, and

(5) promoting the indispensable role of airborne defense in our national security.

SERVICE OF PROCESS

SEC. 4. With respect to service of process, the corporation shall comply with the laws of the State or States in which it is incorporated and the State or States in which it carries on its activities in furtherance of its corporate purposes.

MEMBERSHIP

SEC. 5. (a) Subject to subsection (b), eligibility for membership in the corporation and the rights and privileges of members of the corporation shall be as provided in the constitution and bylaws of the corporation.

(b) Terms of membership and requirements for holding office within the corporation shall not discriminate on the basis of race, color, national origin, sex, religion, or handicapped status.

BOARD OF DIRECTORS; COMPOSITION; RESPONSIBILITIES

SEC. 6. The composition of the board of directors of the corporation and the responsibilities of such board shall be as provided in the articles of incorporation of the corporation and shall be in conformity with the laws of the State or States in which it is incorporated.

OFFICERS OF CORPORATION

SEC. 7. The positions of officers of the corporation and the election of members to such positions shall be as provided in the articles of incorporation of the corporation and shall be in conformity with the laws of the State or States in which it is incorporated.

RESTRICTIONS

SEC. 8. (a) No part of the income or assets of the corporation may inure to the benefit of any member, officer, or director of the corporation or be distributed to any such individual during the life of this charter. Nothing in this subsection shall be construed to prevent the payment of reasonable compensation to the officers of the corporation or reimbursement for actual and necessary expenses in amounts approved by the board of directors.

(b) The corporation may not make any loan to any officer, director, or employee of the corporation.

(c) The corporation and any officer and director of the corporation, acting as such officer or director, shall not contribute to, support or otherwise participate in any political activity or in any manner attempt to influence legislation.

(d) The corporation shall have no power to issue any shares of stock nor to declare or pay any dividends.

(e) The corporation shall not claim congressional approval or Federal Government authority for any of its activities.

LIABILITY

SEC. 9. The corporation shall be liable for the acts of its officers and agents whenever such officers and agents have acted within the scope of their authority.

BOOKS AND RECORDS; INSPECTION

SEC. 10. The corporation shall keep correct and complete books and records of account and minutes of any proceeding of the corporation involving any of its members,

the board of directors, or any committee having authority under the board of directors. The corporation shall keep, at its principal office, a record of the names and addresses of all members having the right to vote in any proceeding of the corporation. All books and records of such corporation may be inspected by any member having the right to vote in any corporation proceeding, or by any agent or attorney of such member, for any proper purpose at any reasonable time. Nothing in this section shall be construed to contravene any applicable State law.

AUDIT OF FINANCIAL TRANSACTIONS

SEC. 11. The first section of the Act entitled "An Act to provide for audit of accounts of private corporations established under Federal law", approved August 30, 1964 (36 U.S.C. 1101), is amended by adding at the end thereof the following:

"(74) 82nd Airborne Division Association, Incorporated.".

ANNUAL REPORT

SEC. 12. The corporation shall report annually to the Congress concerning the activities of the corporation during the preceding fiscal year. Such annual report shall be submitted at the same time as the report of the audit of the corporation required by section 2 of the Act entitled "An Act to provide for audit of accounts of private corporations established under Federal law", aproved August 30, 1964 (36 U.S.C. 1101). The report shall not be printed as a public document.

RESERVATION OF RIGHT TO AMEND, ALTER, OR REPEAL CHARTER

SEC. 13. The right to amend, alter, or repeal this Act is expressly reserved to the Congress.

DEFINITION OF STATE

SEC. 14. For purposes of this Act, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the territories and possessions of the United States.

TAX-EXEMPT STATUS

SEC. 15. The corporation shall maintain its status as an organization exempt from taxation as provided in the Internal Revenue Code of 1986.

TERMINATION

SEC. 16. If the corporation fails to comply with any of the restrictions or provisions of this Act, the charter granted by this Act shall expire.

FEDERAL DEBT COLLECTION PROCEDURES ACT

The Senate proceeded to consider the bill (S. 84) to amend title 28, United States Code, to provide Federal debt collection procedures, which had been reported from the Committee on the Judiciary, with an amendment to strike all after the enacting clause, and insert in lieu thereof, the following:

S. 84

That this Act may be cited as the "Federal Debt Collection Procedures Act of 1989".

TITLE I—DEBT COLLECTION PROCEDURES

SEC. 101. Title 28 of the United States Code is amended by inserting immediately after chapter 175 the following:

"CHAPTER 176—FEDERAL DEBT COLLECTION PROCEDURE

"SUBCHAPTER A—DEFINITIONS AND GENERAL PROVISIONS

"SUBCHAPTER A—DEFINITIONS AND GENERAL PROVISIONS

"§ 3001. Definitions

"As used in this chapter—

"(a) 'claim' means amounts owing on account of direct loans or loans insured or guaranteed by the United States and all other amounts due the United States from or on account of fees, duties, leases, rents, services, sales of real or personal property, overpayments, fines, assessments, penalties, restitution, damages, interest, taxes, bail bond forfeitures, reimbursements and recovery of costs incurred and other sources of indebtedness. This definition includes amounts due the United States for the benefit of an Indian tribe or individual Indian.

"(b) 'Counsel for the United States' shall include for the purposes of this chapter, a United States attorney, an assistant United States attorney designated to act on behalf of the United States attorney, an attorney with the United States Department of Justice or other Federal agency having litigation authority and any private attorney authorized by contract to conduct litigation for collection of debts on behalf of the United States.

"(c) 'Court' means any court created by the Congress of the United States exclusive of the United States Tax Court.

"(d) 'Debt' means liability to the United States on a claim.

"(e) 'Debtor' means a person who is liable to the United States on a claim.

"(f) 'Debt collection personnel' means personnel employed by any agency of the Federal government whose primary duties are the collection of the debts owed to the United States.

"(g) 'Disposable earnings' means that part of the earnings remaining after all deductions required by law have been withheld and 'nonexempt disposable earnings' means 25 percent of disposable earnings.

"(h) 'Earnings' means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus or otherwise, and includes periodic payments pursuant to a pension or retirement program.

"(i) 'Garnishee' means a person other than the debtor who has, or is thought to have, possession, custody or control of any property of the debtor, including obligations owed to the debtor whether such obligations are past due or have yet to become due, against whom a garnishment has been issued by the clerk of the court.

"(j) 'Judgment' means a judgment, order or decree entered in favor of the United States in any court whether arising from a civil or criminal proceeding regarding a claim.

"(k) 'Judgment creditor' means the United States in situations in which the United States has judgments in its favor, whenever referred to in this chapter.

"(l) 'Judgment debtor' means a person against whom the United States holds a judgment on a debt.

"(m) 'Person' includes a natural person, including individual Indians, a corporation, a partnership, an unincorporated association, a trust or an estate or other entity, public or private, including local governments and Indian tribes.

"(n) 'Prejudgment remedy' means the remedies of attachment, garnishment, replevin, receivership, sequestration, injunction or a combination of any of the foregoing that are sought prior to judgment.

"(o) 'Property' includes any present or future interest in real, personal (including, but not limited to, earnings, goods, or mixed property, whether legal or equitable, tangible or intangible, vested or contingent, and wherever located and however held, whether held as a tenancy in common, joint tenancy, tenancy by the entirety, community property, in partnership, or in trust (including spendthrift and pension trusts), and excludes any property held in trust by the United States for the benefit of any Indian tribe or individual Indian or any Indian lands subject to restrictions against alienation imposed by the United States.

"(p) 'Service' under the provisions of this chapter shall be in accordance with the Federal Rules of Civil Procedure.

"(q) 'State' includes the several states, the District of Columbia, the Commonwealths of Puerto Rico and the Northern Marianas and any of the territories and possessions of the United States.

"(r) 'United States' includes an officer or agency thereof, a Federal corporation, Federal instrumentality, department, commission, board or other Federal entity.

"(s) 'United States marshal' means the United States marshal, his designee or contractor.

"§ 3002. Rules of construction

"In this title—

"(a) 'includes' and 'including' are not limiting;

"(b) 'or' is not exclusive;

"(c) the singular includes the plural;

"(d) the provisions are general and intended as a unified coverage of the subject matter;

"(e) if any provision or amendment made by this chapter or application thereof to any person is held invalid, the provisions of every other part and their application shall not be affected thereby;

"(f) the cases arising under the provisions herein shall not affect cases arising under admiralty jurisdiction;

"(g) the provisions of this chapter do not and should not be construed to curtail or limit any rights the United States has to collect taxes under any other provision of Federal law;

"(h) the provisions of this chapter do not, and should not be construed to, curtail or limit any rights the United States has under any other provision of Federal law to collect any fine, penalty, assessment, restitution, or forfeiture arising in a criminal case; and

"(i) the provisions of this chapter do not, and should not be construed to, curtail or limit the rights the United States has under any other provision of Federal law to appoint receivers.

"§ 3003. Nationwide enforcement

"Notwithstanding any other provision of law, any writ, order, judgment, or other process, including a summons and complaint, filed under this chapter may be served in any State and may be enforced by the court issuing the writ, order, or process, regardless of where the person is served with the writ, order, or process.

"§ 3004. Priority of claims of the United States

"The priorities established by the various provisions of this chapter shall be superseded by the provisions of section 3713 of title 31, United States Code, when the debtor or, if deceased, his estate is insolvent as determined under that section and the priority of the United States shall be in accordance therewith.

"§ 3005. Claims of the United States not barred by State statute of limitations

"The United States shall not be barred by the statute of limitations of any State in the enforcement of any of its claims.

"§ 3006. Right of set-off or recoupment

"Except as specifically provided for in this chapter, nothing in this chapter shall be construed to affect the common law or statutory rights to set-off or recoupment.

"§ 3007. Discovery

"(a) The United States may have discovery from any person including the debtor regarding the financial condition of the debtor in any case in which the United States seeks to enforce a claim. Such discovery may be before judgment or after judgment is entered in the case and in the manner in which discovery is provided for in the Federal Rules of Civil Procedure.

"(b) After judgment, the United States may also subpoena the judgment debtor or a third party to appear before the court at a location consistent with the Federal Rules of Civil Procedure with all records, books and other documents and to answer under oath questions regarding the debtor's financial condition and ability to satisfy the judgment.

"(c) The court shall impose appropriate sanctions as provided by the Federal Rules of Civil Procedure or the court's contempt power, including arrest of the offending person or debtor, for failure to comply with these discovery procedures.

"§ 3008. Affidavit requirements

"Any affidavit required of the United States by this chapter may be made upon information and belief, where reliable and reasonably necessary, establishing with particularity, to the court's satisfaction, facts supporting the claim of the United States.

"§ 3009. Perishable property

"At any time during any proceedings, other than those under section 3103(a), the court may determine on its own initiative or upon motion of any party, that any seized or detained property, or any portion thereof, is likely to perish, waste, or be destroyed, or otherwise depreciate in value during the pendency of the proceedings. The court shall order the sale of the property or portion thereof and require the proceeds to be deposited with the clerk of the court. For purposes of liability on the part of the United States, the price paid at any such sale shall be conclusively presumed to be the fair market value.

"§ 3010. Immunity

"Counsel for the United States, but excluding any private attorneys authorized by contract to conduct litigation for collection of debts on behalf of the United States, and non-attorney debt collection personnel shall have absolute immunity in their individual and official capacities from any liability arising from errors, omissions or negligence in performance of their official debt collection duties.

"§ 3011. Proceedings before United States magistrates

"A district court of the United States may assign its duties in proceedings under this chapter to a United States magistrate to the extent not inconsistent with the Constitution and laws of the United States. A district court may adopt appropriate rules to carry out any such assignment.

"§ 3012. United States marshals' authority to designate keeper

"Whenever the United States marshal is authorized to seize property pursuant to the provisions of this chapter, the United States marshal shall be authorized to designate another person or Federal agency to hold for safekeeping such property seized.

"§ 3013. Co-owned property

"The remedies available to the United States under this chapter shall be enforced against property which is co-owned by a debtor and others to the extent allowed by the law of the State where the property is located.

"For the purposes of this section, 'property' does not include the rights or interest of an individual other than the debtor in a retirement system for Federal military or civilian personnel established by the United States or any agency thereof. A 'retirement system for Federal military or civilian personnel' means a pension or annuity system for Federal military or civilian personnel of more than one agency, or for some or all of such personnel of a single agency, established by statute or regulation pursuant to statutory authority.

"§ 3014. Assessment of charges on a claim

"The United States may assess on a claim a charge of 10 percent of the amount of the claim to cover the cost of processing and handling the litigation and judicial enforcement of the claim.

"§ 3015. Funding

"It is hereby authorized that such sums be appropriated as may be necessary to carry out the provisions of this chapter. Appropriations authorized under this section shall remain available for obligations necessary to implement this chapter for 1 year.

"§ 3016. Investigative authority

"When the United States has reason to believe that an activity in violation of legal standards threatens to deprive it of a claim, the appropriate United States Attorney may commence a proceeding against named or unknown parties for the purpose of determining whether a claim for relief should be asserted under applicable law, and all discovery proceedings available under the Federal Rules of Civil Procedures shall be available in such proceeding.

"§ 3017. Subrogation

"When the United States asserts a claim against a debtor for sums alleged to be due the United States, the United States may name as an additional defendant then or by way of amendment of its complaint, any party reasonably believed to owe sums to the debtor arising out of the transaction or occurrence giving rise to the obligation to the United States, including but not limited to obligations on account of requirements to provide goods or services pursuant to a loan or loan guarantee extended pursuant to Federal law. If such party pays or is found liable, any amounts paid to the United States shall be credited to the account of the debtor.

"§ 3018. Effective date

"This Act and the amendments made by this Act shall take effect 180 days after the date of enactment and shall apply to all claims and debts owed to the United States and judgments in favor of the United States.

"SUBCHAPTER B—PREJUDGMENT REMEDIES

"SUBCHAPTER B—PREJUDGMENT REMEDIES

"§ 3101. Prejudgment remedies with prior notice

"(a) APPLICATION.—(1) The United States may in conjunction with the complaint or at any time after the filing of a civil action, make application, under oath, to the court to issue any prejudgment remedy allowed by law.

"(2) Such application shall be filed with the court and shall set forth the factual and legal basis for each prejudgment remedy sought.

"(3) Such application shall state that the party against whom any prejudgment remedy is sought shall be afforded an opportunity for a hearing.

"(b) GROUNDS.—Any prejudgment remedy may be issued in favor of the United States by any court of the United States on application before judgment when—

"(1) the application sets forth with particularity, that all statutory requirements for the issuance of such prejudgment remedy sought under this chapter have been complied with by the United States; and

"(2) the court finds that the United States has shown the probable success of its claim.

"(c) NOTICE; FORM OF NOTICE.—Upon the filing of an application, the clerk of the court shall issue a notice directed to any person against whom any prejudgment remedy would operate, substantially in the following form—

"NOTICE

"You are hereby notified that your [property] may be taken away from you by the United States, which says that you owe the United States a debt of $[amount]. The United States wants to take your property so that it can be sure you will pay if the court decides that you owe this money.

"If you do not want to have your property taken away, you may ask for a hearing before this court. You may ask for the hearing anytime within 20 days from the date that this notice was mailed as indicated below. The hearing, if you so demand, will take place within five working days after you notify the court, or as soon thereafter as is practicable. You may ask for the hearing by checking the box at the bottom of this notice and filing it with the court at the following address: [address of court]. You must also send a copy to counsel for the United States at [address], so that the United States knows that you want the hearing.

"At the hearing, the court will decide whether the claim against you is probably valid and whether other legal requirements have been met. In addition, there are certain exemptions under Federal law which you may be entitled to claim with respect to the property.

"If you do not check the box requesting a date for a hearing and take this notice to the court within twenty days, the court will automatically assume you do not want a hearing and you will lose your right to a hearing before the United States may take your property with the court's permission.

"If you have any questions concerning your rights or this procedure, you should consult an attorney.

"DATE OF MAILING: _____

"(d) SERVICE OF NOTICE AND APPLICATION.—(1) A copy of the notice and a copy of the application for issuance of any prejudgment remedy shall be served by counsel for the United States by first class mail on each party against whom any remedy is sought. If such service is not possible, then service may be made under rule 4 of the Federal Rules of Civil Procedure, as appropriate.

"(2) Proof of service by mail may be made by affidavit or certification of mailing and shall set forth the actual date of mailing.

"(e) TIME TO REQUEST HEARING DATE; FORM OF REQUEST.—(1) Each person served with a copy of the notice set forth above and the application for any prejudgment remedy may request a date be set for the hearing on such application by filing with the clerk of the court within 20 days after service of the notice a written request for hearing date. The request for hearing shall be made by using the form provided or in some other writing. A copy of the request for hearing date shall be mailed by the person requesting the hearing to counsel for the United States.

"(2) The clerk of the court shall apprise counsel for the United States and the person requesting the hearing of the date of hearing.

"(f) WAIVER OF HEARING.—(1) If no request for hearing date is filed within the required time, counsel for the United States shall file an affidavit of default setting forth that service was made, that no request for hearing date was filed and that the party against whom any prejudgment remedy is sought has apparently waived any hearing. Counsel for the United States shall also file a proposed form of the written order requested. Upon filing of such affidavit, the clerk shall enter the order of waiver of record and any party so defaulted loses his right to a hearing prior to the issuance of the prejudgment remedy sought.

"(2) Upon entry of the order of waiver, the clerk shall immediately deliver the court file to the judge to whom the matter is assigned.

"(g) JUDICIAL REVIEW APPLICATION; ISSUANCE OF PREJUDGMENT REMEDIES WITH NOTICE.—(1) The court shall, within 5 days after hearing or the entry of the order of waiver, or as soon thereafter as is practical, review and examine all pleadings, evidence, affidavits and documents filed in the action to determine the following:

"(A) that evidence of service has been filed together with the original of the application and copy of notice;

"(B) where an order of waiver has been entered, that the affidavit of default has been filed and the order entered by the clerk;

"(C) that the claim or claims of the United States are based on facts established by the evidence or stated in the affidavit are sufficient to show that such claim or claims are probably valid; and

"(D) that any statutory requirement of this chapter for the issuance of any prejudgment remedy has been shown.

"(2) Upon the court's determination that the requirements of subsection (g)(1) have been met, the court shall issue all process sufficient to put into effect the prejudgment remedy sought.

"§ 3102. Prejudgment remedies without prior notice

"(a) GROUNDS.—Any prejudgment remedy may be issued by any court without prior notice to the person against whom it will operate when the United States has a reasonable cause to believe that—

"(1) the person against whom the prejudgment remedy is sought is about to leave the jurisdiction of the United States with the intent to hinder, delay, or defraud the United States and has refused to secure that debt, or is a fugitive from justice;

"(2) such person has secreted or is about to secrete property;

"(3) such person has or is about to assign, dispose, remove, or secrete property, wholly or in part, or that such person is about to assign or dispose of property with the effect of hindering, delaying, or defrauding creditors;

"(4) the United States is the owner, lessor or otherwise is lawfully entitled to the immediate possession of the property claimed and is seeking a prejudgment remedy in the nature of replevin, receivership or sequestration;

"(5) a prejudgment remedy is required to obtain jurisdiction within the United States;

"(6) a constructive or resulting trust should be impressed on the property in favor of the United States if such person is likely to put the property beyond the reach of the United States;

"(7) the person against whom the prejudgment remedy is sought is converting, is about to convert or has converted his property of whatever kind, or some part thereof, into money, securities, or evidence of debt in a manner prejudicial to creditors;

"(8) the person against whom the prejudgment remedy is sought has evaded service of process by concealing himself or has temporarily withdrawn from the jurisdiction of the United States; or

"(9) the debt is due for property obtained illegally or by fraud.

"(b) APPLICATION; AFFIDAVIT; BOND; ISSUANCE OF WRIT.—(1) Contemporaneously with or at any time after the filing of a civil action, the United States shall file an application supported by an affidavit made upon information and belief, where reliable and reasonably necessary, establishing with particularity to the court's satisfaction facts supporting the probable validity of the claim and the right of the United States to recover what is demanded in the application. The application shall state the amount of the debt owed the United States, including principal, interest, and costs, if any, and one or more of the grounds set forth in section 3102(a) and the specific requirements of the specific remedy sought.

"(2) No bond is required of the United States.

"(3) Upon the court's determination that the requirements of subsection (b)(1) have been met, the court shall issue all process sufficient to put into effect the prejudgment remedy sought.

"(c) NOTICE AND HEARING; WAIVER OF HEARING.—(1) Upon filing of an application as provided in this section, the clerk shall issue notice in substantially the following form to the counsel for the United States for service upon the party against whom any prejudgment remedy is sought in accordance with subsection (3) of this section—

"NOTICE

"You are hereby notified that your [property] is being taken away from you by the United States, who says that you owe it a debt of $[amount]. The United States is taking your property because it says

[Insert one or more of the specific grounds set forth in section 3102(a).]

"In addition, you are hereby notified that there are certain exemptions under Federal law which you may be entitled to claim with respect to your property.

"If you disagree and think you do not owe the United States, or that you have not done what is stated above, then you can ask this court to hear your side of the story and give your property back to you. If you want such a hearing, it will be given to you within five working days if you so demand after you notify the court that you want one. To do so, check the box at the bottom of this notice or prepare your request in writing and mail it or take it to the clerk of the court at the following address: [address]. You must also send a copy to counsel for the United States at [address], so that the United States will know you want a hearing.

"If you do not request a hearing within thirty days from [date of issue] your property may be disposed of without further notice.

"You should consult a lawyer if you have any questions about your rights about this procedure.

"(2) When a prejudgment remedy is issued under this section, the person against whom it is sought may immediately move to quash such order and the court shall on the request of the debtor hear such motion within 5 days from the date the request was filed. The issues at such hearing shall be limited to—

"(A) the probable validity of the claim or claims of the United States and any defenses and claims of exemptions of the party against whom such prejudgment remedy will operate; and

"(B) the existence of any statutory requirement for the issuance of any prejudgment remedy sought, plus the existence of any ground set forth in section 3102(a) of this chapter.

"(3) Counsel for the United States shall, at the time of the seizure, attachment or garnishment, or within 3 days thereafter, exercise reasonable diligence to serve the person against whom a prejudgment remedy is sought with an application, order and prescribed notice of the seizure, impoundment or such other act ordered by the court and of said person's right to an immediate hearing contesting the same.

"(4) If no request for a hearing is filed with the clerk within 30 days after the notice of seizure is issued by the clerk, the United States may dispose of the property as provided for in this subchapter.

"§ 3103. Attachment

"(a) PROPERTY SUBJECT TO ATTACHMENT.—(1) All property of the debtor or garnishee, except earnings and property exempt under the provisions of this chapter, may be attached pursuant to a writ of attachment in any action in which a debt or damages are recoverable and may be held as security to satisfy such judgment and costs as the United States may recover.

"(2) The amount to be secured by an attachment shall be determined as follows—

"(A) the amount of the debt owed to the United States by the defendant; and

"(B) the estimated amount of interest and costs likely to be taxed by the court.

"(3) In any action or suit for an amount which is liquidated or ascertainable by calculation, no attachment shall be made for a larger sum than the amount of the debt and such additional amount as is reasonably necessary to provide for interest thereon and costs likely to be taxed in the action.

"(b) AVAILABILITY OF ATTACHMENT.—The United States after complying with the provisions of section 3101 or 3102 may, in the following cases, have the property of the defendant attached as security for satisfaction of any judgment which may be recovered by the United States—

"(1) in an action upon a contract, express or implied, for payment of money which is not fully secured by real or personal property, or, if originally so secured, the value of such security may, without any act of the United States or the person to whom the security was given, be substantially diminished below the amount of the debt;

"(2) when an action is pending for damages in tort and the defendant is about to dispose of or remove his property beyond the jurisdiction of the United States;

"(3) in an action for damages or upon contract, express or implied, against a defendant not residing within the jurisdiction of the United States; or

"(4) in an action to recover fines, penalties, or taxes.

"(c) ISSUANCE OF WRIT; CONTENTS.—(1) A writ of attachment shall be issued by the court directing the United States marshal of the district where the property is located to attach so much of the defendant's property as will be sufficient or is available to satisfy the debt of the United States.

"(2) Several writs of attachment may, at the option of the United States, be issued at the same time, or in succession, and sent to different districts until sufficient property is attached to satisfy the debt.

"(3) The writ of attachment shall contain—

"(A) the date of the issuance of the writ;

"(B) the court title and the docket number and name of the cause of action;

"(C) the name and last known address of the defendant;

"(D) the amount to be secured by the attachment; and

"(E) a reasonable description of the property to the extent available.

"(d) LEVY OF ATTACHMENT.—(1) The United States marshal receiving the writ shall proceed without delay to levy upon the property of the defendant found within his district, unless otherwise directed by counsel for the United States. The marshal shall not sell property unless ordered by the court.

"(2) In performing the levy, the United States marshal may enter onto the lands and into the residence or other buildings owned, occupied or controlled by the defendant. In cases where the writ is issued pursuant to section 3101, the marshal shall not enter into a residence or other building except upon specific order of the court.

"(3) When real property is levied upon, the United States marshal shall file a copy of the notice of levy in the same manner as provided for judgments in section 3202. The United States marshal shall also serve a copy of the writ and notice of levy upon the defendant in the same manner that a summons is served in a civil action and make his return thereof. If the United States marshal is unable to serve the writ upon the defendant, he shall post the writ and notice of levy in a conspicuous place upon the property and so make his return thereof.

"(4) Levy upon personal property is made by taking possession of it. Levy on personal property not easily taken into possession or which cannot be taken into possession without great inconvenience or expense, may be made by affixing a copy of the writ and notice of levy on it or in a conspicuous place in the vicinity of it describing in the notice of levy the property by quantity and with sufficient detail to identify the property levied upon. A copy of the writ and notice of levy shall also be served upon the defendant in the same manner that a summons is served in a civil action. Upon completion of the levy of personal property, the United States marshal shall so make his return thereof.

"(e) RETURN OF WRIT; DUTIES OF MARSHAL; FURTHER RETURN.—(1) A United States marshal executing a writ of attachment shall return the writ with his action endorsed thereon or attached thereto and signed by him, to the court from which it was issued within 30 days after the date of the levy.

"(2) The return shall describe the property attached with sufficient certainty to identify it, state the location where it was attached, when it was attached and the disposition made of the property. If no property was attached, the return shall so state.

"(3) When personal property has been replevied as authorized by section 3103(j), the United States marshal shall deliver the replevin bond to the clerk of the court to be filed in the action.

"(4) When the property levied on is claimed, replevied or sold after the return, the United States marshal shall immediately make a further return to the clerk of the court showing the disposition of the property.

"(f) LEVY OF ATTACHMENT AS LIEN ON PROPERTY; SATISFACTION OF LIEN.—(1) A levy on property under a writ of attachment creates a lien on the property in favor of the United States.

"(2) The levy of the writ of attachment upon any property of defendant subject thereto is a lien from the date of the levy on the real property and on such personal property as remains in the custody of the attaching United States marshal and on the proceeds of such personal property as is sold.

"(3) The lien in favor of the United States marshal shall be ranked ahead of any other security interests perfected after the time of levy and filing of a copy of the notice of levy pursuant to subsection (d)(3) of this section.

"(4) The lien shall arise from the time of levy and continue until a judgment in the case is obtained or denied, or the action is otherwise dismissed. The death of the defendant whose property is attached does not terminate the attachment lien. Upon issuance of a judgment in the action and registration under this chapter, the judgment lien so created relates back to the time of levy.

"(5) Upon entry of judgment for the United States, the court shall order the proceeds of the personal property, if any has been sold, to be applied to the satisfaction of the judgment, and also order the sale of any remaining personal property and the sale of any real property levied on to satisfy the judgment.

"(g) ATTACHMENT OF PERISHABLE PROPERTY; SALE; PROCEDURE.—(1) When personal property that has been attached is not replevied, the court may order it to be sold when it appears that the property is in danger of serious and immediate waste or decay, or that keeping it until trial will result in such expense or deterioration in value as substantially will lessen the amount likely to be realized therefrom.

"(2) In ascertaining whether the property is in danger of serious and immediate waste or decay or that keeping of the property until trial will result in such expense or deterioration in value as will substantially lessen the amount likely to be realized therefrom, the court may require or dispense with notice to the parties and may act upon such information provided by affidavit, certificate of the United States marshal or other proof, as appears sufficient to protect the interest of the parties.

"(h) DISPOSITION OF PROCEEDS OF SALE OF PERISHABLE PROPERTY; REPORT OF SALE.—Within 5 days after sale, the proceeds of the sale as provided in subsection 3103(g) after deduction of the United States marshal's expenses therefrom shall be paid by the United States marshal making the sale to the clerk of the court. The proceeds shall be accompanied by a statement in writing and signed by the United States marshal, to be filed in the action, stating the time and place of sale, the name of the purchaser and the amount received with an itemized account of expenses.

"(i) PRESERVATION OF PERSONAL PROPERTY UNDER ATTACHMENT.—If personal property in custody of the United States marshal under a writ of attachment is not replevied, claimed or sold, the court may make such order for its preservation or use as appears to be to the interest of the parties.

"(j) REPLEVIN OF ATTACHED PROPERTY BY DEFENDANT; BOND.—At any time before judgment, if the property has not previously been sold, defendant may replevy the property or any part thereof by giving a bond approved by counsel for the United States or the court and payable to the United States in double the amount of the debt.

"(k) JUDGMENT WHERE PERSONAL PROPERTY REPLEVIED.—When personal property under attachment has been replevied, the judgment which may be entered shall be against defendant and also against the sureties on his replevin bond for the amount of the judgment, interest and costs.

"(l) RESTORATION OF PROPERTY OR EXONERATION OF BOND; LEVY ON EXEMPT PROPERTY.—(1) If the attachment is vacated or if the judgment is for defendant, the court shall order the property or proceeds thereof restored to defendant or exonerate the replevin bond. The court may determine under what circumstances the defendant is entitled to receive the proceeds rather than the attached property.

"(2) When any property claimed to be exempt is levied upon, defendant may, at any time after such levy, apply to the court for vacation of such levy. If it appears to the court that the property so levied upon is exempt, the court shall order the levy vacated and the property returned to defendant.

"(m) REDUCTION OR DISCHARGE OF ATTACHMENT.—(1) If an excessive or unreasonable attachment is made, the defendant or person whose property has been attached may submit a written motion to the court which issued the writ for a reduction of the amount of the attachment or its discharge. Notice of such motion shall be served upon the United States in accordance with the Federal Rules of Civil Procedure. The defendant may move for reduction or dissolution of attachment as appropriate.

"(2) The court shall order a part of the property to be released, if upon hearing the court finds that the amount of the attachment is excessive or unreasonable or where the attachment is for a sum larger than the liquidated or ascertainable amount of the debt plus an amount necessary to include interest and costs likely to be taxed.

"(3) The court shall dissolve the attachment if the amount of the debt is unliquidated and unascertainable by calculation.

"§ 3104. Garnishment

"(a) All prejudgment garnishments shall meet the requirements of sections 3101 and 3102.

"(b) All prejudgment garnishments as authorized by the court hereunder shall be issued and answered in the same manner and to the same extent as set forth in section 3306 with the following exceptions—

"(1) The writ shall specify the date that the order authorizing prejudgment garnishment was entered.

"(2) The writ shall specify the amount claimed by the United States.

"§ 3105. Injunctions

"Whether or not there are other remedies available to the United States under this chapter, nothing in this chapter shall be construed to preclude or otherwise limit the United States or any other party from obtaining injunctive relief under the Federal Rules of Civil Procedure in actions for debts owed the United States.

"§ 3106. Sequestration

"(a) APPLICATION FOR WRIT OF SEQUESTRATION AND ORDER.—If the United States claims in its complaint the right to title or possession of property or seeks to enforce a lien or security interest in such property, the United States may file an affidavit showing—

"(1) a description of the property sufficient to identify it;

"(2) the approximate value of the property;

"(3) the location of the real property, or in the case of personal property, the last known and likely locations of the property;

"(4) the availability of sequestration.

"(b) AVAILABILITY OF SEQUESTRATION.—The United States after complying with, or in addition to, the provisions of sections 3101 or 3102 may have property sequestered—

"(1) upon a showing that there exists an immediate danger that the debtor or garnishee of such property will ill treat, waste, destroy or convert to his own use the property, which includes, but is not limited to, crops, timber, rents, perishable goods, livestock or the revenues therefrom; or

"(2) upon a showing that title to or possession of such property has been secured by the debtor or other defendant or the party in possession by surreptitious means, trick, scheme, fraud, force, violence, claim of adverse possession or such other claims or any means adverse to the claim in title or possession, or both, of the United States.

"(c) ISSUANCE OF WRIT.—A writ of sequestration shall be issued by the court directing the debtor or other defendant or party in possession to sequester the property and deliver it to the United States.

"(d) Unless inconsistent, the provisions governing section 3103 (g) through (l) shall be applicable to this section.

"(e) These writs shall be served in accordance with the Federal Rules of Civil Procedure.

"§ 3107. Replevin

"(a) APPLICATION FOR WRIT.—If the United States claims in its complaint the right to possession of specific personal property, the United States may, at any time after complying with the provisions of section 3101 or 3102, file an affidavit showing—

"(1) that the United States is the owner of the property claimed, or is lawfully entitled to its immediate possession;

"(2) a description of the property;

"(3) that the property is wrongfully detained by the defendant;

"(4) the approximate value of the property.

"(b) SEIZURE.—If the court determines the United States has met the above requirements, it shall order that the United States marshal take possession of the specified property and deliver it to the United States.

"(c) REDELIVERY OF POSSESSION TO DEFENDANT.—The defendant may obtain redelivery of the property or any part thereof by giving bond as set forth in section 3103(j).

"§ 3108. Receivership

"(a) APPOINTMENT OF A RECEIVER.—The United States may apply for the appointment of a receiver for property in which it has an interest and which is or is to be the subject of an action in court. The application may be filed at any time prior to judgment or during the pendency of an appeal if there is a danger that the property will be removed from the jurisdiction of the court, lost, materially injured or damaged, mismanaged or the United States has otherwise established grounds for such relief under section 3101(a) or 3102(a). However when the security agreement so provides, a receiver shall be appointed without notice or without regard to adequacy of security. An application made by the United States when it is not already a party to the action constitutes an appearance in the action and the United States shall be joined as a party.

"(b) POWERS OF RECEIVER; EMPLOYMENT OF COUNSEL.—The court appointing a receiver may authorize him to take possession of real and personal property and sue for, collect and sell obligations upon such conditions and for such purposes as the court shall direct and to administer, collect, improve, lease, repair or sell such real and personal property, as the court shall direct. A receiver appointed to manage residential or commercial property shall have demonstrable expertise in the management of these types of property. Unless expressly authorized by order of the court, a receiver shall have no power to employ attorneys, accountants, appraisers, auctioneers or other professional persons. Upon motion of the receiver or a party, powers granted to a receiver may be expanded or limited. A receiver appointed under the terms of a security agreement shall be entitled to recover the rents and profits of the property covered by the security agreement as additional security and to pay them over to the United States in payment of any amount due arising from a default by the debtor.

"(c) UNITED STATES AS SECURED PARTY.—In the event of any default or defaults in paying the principal, interest, taxes, water, rents, or premiums of insurance required by the security instrument or in the event of a nonfinanced default or defaults, the United States in any action to foreclose the security interest shall be entitled, without notice and without regard to adequacy of any security for the debt, to the appointment of a receiver of the rents and profits of the premises covered by the security interest, and the rents and profits of the premises are assigned to the United States as further security for the payment of the debts.

"(d) DURATION OF RECEIVERSHIP.—In an action to foreclose a security interest, the receivership shall terminate when the purchaser at the foreclosure sale takes lawful possession of the property unless the court directs otherwise. In all other actions, the receivership shall not continue past the entry of judgment unless the court orders it continued under section 3302(b) or unless the court otherwise directs its continuation.

"(e) ACCOUNTS; REQUIREMENT TO REPORT.—A receiver shall keep written accounts itemizing receipts and expenditures, describing the property and naming the depository of receivership funds and his accounts shall be open to inspection by any person having an apparent interest in the property. The receiver shall file reports at regular intervals as directed by the court and shall serve the United States with a copy thereof.

"(f) REMOVAL.—Upon motion of any party or upon its own initiative, the court which appointed the receiver may remove him at any time with or without cause.

"(g) PRIORITY.—If more than one court appoints a receiver, the receiver first qualifying under law shall be entitled to take possession, control or custody of the property.

"(h) COMMISSIONS OF RECEIVERS.—

"(1) GENERALLY.—A receiver is entitled to such commissions not exceeding 5 percent of the sums received and disbursed by him as the court allows unless the court otherwise directs.

"(2) ALLOWANCE WHERE FUNDS DEPLETED.—If, at the termination of a receivership, there are no funds in the hands of a receiver, the court may fix the compensation of the receiver in accordance with the services rendered and may direct the party who moved for the appointment of the receiver to pay such compensation in addition to the necessary expenditures incurred by the receiver which remained unpaid.

"(3) PROCEDURE.—At the termination of a receivership, the receiver shall file a final accounting of the receipts and disbursements and apply for compensation setting forth the amount sought and the services rendered by him.

"SUBCHAPTER C—JUDGMENTS; LIENS

"SUBCHAPTER C—JUDGMENTS; LIENS

"§ 3201. Judgment by confession

"(a) GENERAL PROVISION.—On application, a court may enter a judgment by confession in favor of the United States without the

filing of a civil action for money due and owing.

"(b) VENUE.—The confession of judgment shall be filed in the district in which one or more of the defendants reside, can be found, are doing business at the time of the application, or in cases proceeding by in rem or quasi in rem jurisdiction where the property sought to be adjudicated is located.

"(c) STATEMENT BY DEFENDANT; CONTENTS.—Before a judgment by confession shall be entered, a sworn statement in writing shall be made and signed by the defendant after default and subsequent notice by the United States and filed with the court along with the application, stating—

"(1) the amount for which judgment may be entered and authorizing the entry of judgment;

"(2) the facts out of which the debt arose and that the amount confessed is justly due; and

"(3) that the person signing the statement understands that a judgment by confession allows the entry of judgment without further proceedings and authorizes enforced collection of the judgment.

"(d) ENTRY OF JUDGMENT.—The confession of judgment may be filed with the clerk of the court. The clerk shall enter a judgment for the amount confessed.

"(e) CONFESSION BY JOINT DEBTORS.—One or more joint debtors may confess a judgment for a joint debt due. Where all the joint debtors do not join in the confession, the judgment shall be entered and enforced against only those who confessed it. A confessed judgment against some of the joint debtors is not a bar to an action against the other joint debtors.

"(f) ENFORCEMENT OF JUDGMENT BY CONFESSION.—Judgments by confession shall be enforced in the same manner as other judgments.

"§ 3202. Judgment lien

"(a) CREATION OF LIEN GENERALLY.—A judgment shall be a lien upon all real property of a judgment debtor upon filing a certified copy of the abstract of the judgment in the manner in which a notice of tax lien would be filed under section 6323(f) (1) and (2) of the Internal Revenue Code of 1986.

"(b) IN CRIMINAL CASES.—A judgment obtained by the United States in a criminal case shall create a lien as provided in sections 3565 and 3613 of the Internal Revenue Code of 1986.

"(c) IN TAX CASES.—A judgment obtained by the United States in a tax case shall create a lien co-extensive with any lien created prior to judgment under section 6321 of the Internal Revenue Code of 1986; if no lien was so created prior to the judgment, then the procedure in subsection (a) shall be followed.

"(d) AMOUNT OF LIEN.—A lien created hereunder is for the amount necessary to satisfy the judgment, including costs and interest.

"(e) PRIORITY OF LIEN.—A lien created hereunder shall have priority over any other lien or encumbrance which is perfected later in time. However, liens created under sections 3565 and 3613 of the Internal Revenue Code of 1986, regarding criminal judgments or under section 6321 of the Internal Revenue Code of 1986, regarding tax judgments shall have priority as otherwise provided by law.

"(f) DURATION OF LIEN; RENEWAL.—(1) A lien created hereunder is effective, unless satisfied, for a period of 20 years.

"(2) The lien may be renewed for one additional period of 20 years upon filing a notice of renewal in the same manner as the judgment was filed and shall relate back to the date the judgment was filed. The notice of renewal must be filed before the expiration of the first 20-year period to prevent the expiration of the lien.

"(3) The duration and renewal of a lien created under sections 3565 and 3613 of title 18, United States Code, regarding criminal judgments, or a lien created under section 6321 of the Internal Revenue Code of 1986, regarding tax judgments shall be as otherwise provided by law.

"(g) RELEASE OF JUDGMENT LIEN.—A judgment lien shall be released upon the filing of a satisfaction of judgment or release of lien in the same manner as the judgment was filed to obtain the lien.

"(h) EFFECT OF LIEN UPON ELIGIBILITY FOR FEDERAL GRANTS, LOANS OR PROGRAMS.—Any person who has a judgment lien against his property for any debt to the United States shall not be eligible to receive any grant or loan which is made, insured, guaranteed or financed directly or indirectly by the United States or to receive funds directly from the Federal Government in any program, except funds to which such person is entitled as beneficiary, until the judgment is paid in full or otherwise satisfied. The agency responsible for such grants and loans may promulgate regulations to allow for waiver of this restriction on eligibility for such grants and loans.

"§ 3203. Sale of property subject to judgment lien

"Upon application to the court, the court may order the United States to sell pursuant to the provisions of sections 2001 and 2002 of title 28, United States Code, any real property subject to its judgment lien. This provision shall not preclude the United States from using an execution sale to sell real property subject to a judgment lien.

"§ 3204. Interest on judgments

"(a) Judgments for money, other than criminal or tax judgments, shall bear interest at the greater of—

"(1) the rate in an express contract or negotiable instrument, if the action was brought for the recovery of an amount due on the contract or negotiable instrument; or

"(2) the rate established by statute or regulation applicable to the debt owed;

"(3) the judgment interest rate established in accordance with this section.

"(b) The judgment interest rate, where applicable, shall be calculated from the date of the entry of the judgment, at a rate equal to 150 percent of the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the average accepted auction price for the last auction of 52-week United States Treasury bills settled immediately prior to the date of the judgment. The Director of the Administrative Office of the United States Courts shall distribute notice of that rate and any changes in it to all Federal Courts.

"(c) Interest on judgments shall accrue daily from the date of entry of the judgment at the rate determined herein and shall be compounded annually to the date of payment.

"(d) Interest on tax judgments obtained under the Internal Revenue Code shall be allowed under section 6621 of such Code.

"(e) Interest on criminal judgments shall be allowed as provided in title 18, United States Code.

"(f) Nothing in this section shall preclude the assessment of prejudgment interest that is otherwise allowable by law.

"SUBCHAPTER D—POSTJUDGMENT REMEDIES

"SUBCHAPTER D—POSTJUDGMENT REMEDIES

"§ 3301. Enforcement of judgments.

"(a) A judgment may be enforced by any of the remedies set forth in this subchapter, and the court may issue other writs pursuant to section 1651 of title 28, United States Code, as necessary to supplement these remedies, subject to the provision of rule 81(b) of the Federal Rules of Civil Procedure.

"(b) The property of a judgment debtor which is subject to sale to satisfy the judgment may be sold by judicial sale, pursuant to sections 2001, 2002, and 2004 of title 28, United States Code, or by execution sale pursuant to section 3304(g) of this subchapter.

"§ 3302. Orders in aid of execution.

"Where the judgment debtor has an ownership interest of any kind in property which is not exempt and cannot readily be attached or levied on by ordinary legal process, the United States is entitled to aid from the court by injunction or other appropriate order to reach the property to satisfy the judgment whether the property is located in the same district or other districts.

"(a) ORDER.—The court may order the property, together with all documents or records related to the property, that is in or subject to the possession or control of the judgment debtor or another person, to be turned over to the United States for execution or otherwise applied toward the satisfaction of the judgment. Where the judgment debtor or other person refuses to turn over the property, the court may enforce the order by proceedings for contempt or other appropriate order provided the judgment debtor or other person, as appropriate, is served with a copy of the order or has actual notice of the order.

"(b) RECEIVER.—The court may appoint a receiver of property where appropriate in accordance with section 3108 of this chapter.

"(c) SAME OR INDEPENDENT SUIT.—These proceedings may be brought by the United States in the same suit in which the judgment is rendered or in a new and independent suit.

"(d) COSTS.—Upon request, in a proceeding under this section, the United States shall recover from the judgment debtor 10 percent of the reasonable costs. This provision shall apply to the extent that recovery of costs by the United States is not provided for under other applicable provisions of Federal law.

"§ 3303. Restraining notice

"(a) ISSUANCE; ON WHOM SERVED; FORM; SERVICE.—A restraining notice may be issued by the clerk of the court or counsel for the United States as officer of the court. It may be served upon any person, except the employer of a judgment debtor where the property sought to be restrained consists of

earnings due or to become due to the judgment debtor. It shall be served personally in the same manner as a summons. It shall specify all of the parties to the action, the social security number of the judgment debtor, if known, the date the judgment was entered, the court in which it was entered, the amount of the judgment and the amount when due thereon, and the names of all parties against whom the judgment was entered. It shall set forth the requirements of subsection (b) below and shall state that disobedience is punishable as a contempt of court.

"(b) EFFECT OF RESTRAINT; PROHIBITION OF TRANSFER; DURATION.—(1) A judgment debtor who is served with a restraining notice shall not sell, assign, transfer or hypothecate any property, except as may be reasonably necessary for the maintenance or support of the debtor or a dependent of the debtor and if the debtor is engaged in business, as may be reasonably necessary for the payment of expenditures for the continuation, preservation, and operation of such business.

"(2) A person other than the judgment debtor who is served with restraining notice shall not—

"(A) repay any obligation to the judgment debtor;

"(B) return any property to the judgment debtor; or

"(C) sell, assign, transfer or hypothecate any property—

"(i) specifically described in the restraining notice;

"(ii) that the other person knows to be owned by the judgment debtor; or

"(iii) in which the other person could have reason to believe by the exercise of due diligence that the judgment debtor has an ownership interest.

"(3) The restraining notice shall remain in effect for 1 year from the date the notice is served, or until the judgment is satisfied or the restraining notice is vacated by order of the court, whichever occurs first.

"(c) DISCLOSURE.—The person upon whom a restraining notice is served, other than the judgment debtor, shall disclose to the counsel for the United States, in writing under oath within 10 days after receipt of the restraining notice, the type or nature and value of such property of the judgment debtor as may be in his possession or custody. Upon such person receiving or acquiring property of the judgment debtor after receipt of a restraining notice, that person shall disclose to counsel for the United States, in writing under oath within 7 days of receipt of the property, the type or nature and value of such property of the judgment debtor as may be in his possession or custody.

"(d) DISCOVERY.—Any discovery request under the Federal Rules of Civil Procedure which accompanies this restraining notice and which seeks the disclosure of the type, nature and value of property of the judgment debtor must be responded to within 10 days of service of the notice and discovery request or within 10 days after property of the judgment debtor comes into the possession of the person served. Upon request, a reasonable extension may be granted.

"(e) SUBSEQUENT NOTICE.—Leave of court is required to serve more than one restraining notice upon the same person, other than the judgment debtor, with respect to the same judgment.

"(f) NOTICE TO JUDGMENT DEBTOR.—A copy of the restraining notice shall be mailed by first class mail by counsel for the United States to the judgment debtor within 4 days after the time of service of the restraining notice on a person other than the judgment debtor.

"§ 3304. Execution.

"(a) PROPERTY SUBJECT TO EXECUTION.—All property which the judgment debtor possesses and in which the judgment debtor has an interest shall be subject to levy pursuant to a writ of execution; co-owned property shall be subject to execution to the same extent as it is under the law of the State in which it is located. The judgment debtor must identify any property claimed to be exempt under the provisions of subchapter E.

"(b) EXECUTION LIEN.—A lien shall be created in favor of the United States on all property levied upon under a writ of execution and shall date from the time of the levy. This lien shall have priority over all subsequent liens and shall be for the amount due on the judgment. If the United States has a judgment lien, the execution lien shall relate back to the judgment lien date.

"(c) FORM OF WRIT OF EXECUTION.—

"(1) GENERAL REQUIREMENTS.—An execution writ shall specify the date that the judgment was entered, the court in which it was entered, the amount of the judgment if for money, the amount of the costs, and the sum actually due when the writ is issued, the amount of interest due, the rate of post-judgment interest, and the name of the party against whom the judgment was entered. The writ shall direct the United States marshal to satisfy the judgment out of all property, real and personal, of the judgment debtor not otherwise exempt pursuant to this chapter. An execution writ shall direct that only the property in which a named judgment debtor, who is not deceased, has an interest be levied upon or sold thereunder, and shall state the last known address of that judgment debtor.

"(2) EXCEPTION.—There shall be no requirement that personal property be levied upon and sold prior to levy and sale of real property of the judgment debtor.

"(3) EXECUTION FOR DELIVERY OF CERTAIN PROPERTY.—An execution issued upon a judgment for the delivery to the United States of the possession of personal property, or for the delivery of the possession of real property, shall particularly describe the property, and shall require the marshal to deliver the possession of the property to the United States.

"(4) EXECUTION FOR POSSESSION OR VALUE OF PERSONAL PROPERTY.—If the judgment is for the recovery of personal property or its value, the writ shall command the marshal, in case a delivery thereof cannot be had, to levy and collect the value thereof for which the judgment was recovered, to be specified therein, out of any property of the party against whom judgment was rendered, liable to execution.

"(d) ISSUANCE.—(1) The clerk of any court where a judgment is docketed, entered or registered, upon written application of counsel for the United States, shall, and without other or further order of a judge of that court, forthwith issue writs of execution. The writs shall be addressed to "Any United States Marshal," and may be served and executed in any judicial district of the United States, but shall be returnable to the issuing court. The writ shall be signed by the clerk of the court issuing the writ.

"(2) Multiple writs may issue simultaneously, and successive writs may issue before the return date of a writ previously issued.

"(e) RECORDS OF UNITED STATES MARSHAL.—(1) The United States marshal receiving the execution shall endorse thereon the exact hour and day when he received it. If he receives more than one on the same day against the same person, he shall number them as received.

"(2) The United States marshal shall make a memorandum in writing of the date of every levy and specify the property upon which the levy has been made on the process or in an attached schedule. The memorandum or schedule shall also set forth the marshal's costs, expenses and fees.

"(f) LEVY OF EXECUTION.—(1) The United States marshal receiving the writ shall proceed without delay to levy upon the property of the debtor found within his district, unless otherwise directed by counsel for the United States.

"(2) In performing the levy, the United States marshal may enter onto the lands and into the residence or other buildings owned, occupied or controlled by the debtor.

"(3) When real property is levied upon, the United States marshal shall file a copy of the notice of levy in the same manner as provided for judgments in section 3202. The United States marshal shall also serve a copy of the writ and notice of levy upon the debtor in the same manner that a summons is served in a civil action and so make his return thereof. If the United States marshal is unable to serve the writ upon the debtor, he shall post the writ and notice of levy in a conspicuous place upon the property and so make his return thereof.

"(4) Levy upon personal property is made by taking possession of it. Levy on personal property not easily taken into possession or which cannot be taken into possession without great inconvenience or expense, may be made by affixing a copy of the writ and motion of levy on it or in a conspicuous place in the vicinity of it describing in the notice of levy the property by quantity and with sufficient detail to identify the property levied upon. A copy of the writ and notice of levy shall also be served upon the debtor in the same manner that a summons is served in a civil action. Upon completion of the levy of personal property, the United States marshal shall so make his return thereof.

"(5)(A) Real property subject to a security interest or conveyed in trust as security for any debt or contract may be levied upon and sold on execution against the interest of the judgment debtor, subject to such mortgage, and the terms and conditions thereof.

"(B) Personal property pledged, assigned or security for any debt or contract, may be levied upon and sold on complying with the conditions of the pledge, assignment or security interest.

"(g) EXECUTION SALE PROCEDURES.—

"(1) SALE OF REAL PROPERTY.—

"(A) Real property, or any interest therein, shall be sold for cash at public auction at the courthouse of the county, parish or city in which the greater part of the property is located or upon the premises or some parcel thereof.

"(B) The time and place of sale of real property, or any interest therein, under execution shall be advertised by the United States marshal, by publication of notice, once a week for at least 3 weeks prior to the sale, in at least one newspaper of general circulation in the county or parish where the property is located. The first of these publications shall appear not less than 25

days immediately preceding the day of sale. The notice shall contain a statement of the authority by which the sale is to be made, the time of levy, and the time and place of sale; it shall also contain a brief description of the property to be sold, sufficient to identify the property, such as a street address the urban property, and the survey identification and location for rural property, but it shall not be necessary for it to contain field notes.

"(C) The United States marshal shall give written notice of public sale by personal delivery, or certified or registered mail, to persons and parties known to him to claim an interest in property under execution, including lienholders, co-owners and tenants, at least 25 days prior to the day of sale, to the last known address of such persons or parties.

"(2) SALE OF CITY LOTS.—If the real property consists of several lots, tracts, or parcels in a city or town, each lot, tract, or parcel must be offered for sale separately, unless not susceptible to separate sale because of the character of improvements.

"(3) SALE OF RURAL PROPERTY.—If the real property is not located in a city or town, the debtor may divide the property into lots of not less than 50 acres or in such greater or lesser amounts as ordered by the court, furnish a survey of such prepared by a registered surveyor, and designate the order in which those lots shall be sold. When a sufficient number of lots are sold to satisfy the amount of the execution and costs of sale, the marshal shall stop the sale.

"(4) SALE OF PERSONAL PROPERTY.—

"(A) Personal property levied on shall be offered for sale on the premises where it is located at the time of levy, or at the courthouse of the county, parish or city wherein it is located, or at some other place if, owing to the nature of the property, it is more convenient to exhibit it to purchasers at such place. Personal property susceptible of being exhibited shall not be sold unless it is present and subject to the view of those attending the sale, except shares of stock in corporations, and in cases, when by reason of the type or nature of the property, it is impractical to exhibit it, or where the debtor has merely an interest without the right to the exclusive possession, in which case the interest of the debtor may be sold and transferred without the presence of the property.

"(B) Notice of the time and place of the sales of personal property shall be given by posting notice thereof for 10 days successively immediately prior to the day of sale at the courthouse of any county, parish, or city, and at the place where the sale is to be made, and by mailing a copy by registered or certified mail to the judgment debtor at his last known address, or by personal delivery.

"(5) POSTPONEMENT OF SALE.—The United States marshal may postpone an execution sale from time to time continuing the posting of notice and/or publication of the notice until the date to which the sale is postponed, and appending, at the foot of such notice of each successive postponement the following:

"The above sale is postponed until the _____ day of _____, 19___, at _____ o'clock ___ .M., _____, United States Marshal for the District of _____, by _____, Deputy, dated _____.

"(6) BIDDING REQUIREMENTS; LIABILITY OF BIDDER; RESALE.—

"(A) The United States marshal may require of any bidder at any sale a cash deposit of as much as 20 percent of the sale price before the bid is received.

"(B) The cash deposit of any successful bidder at an execution sale shall be forfeited to the United States if he fails to comply with the terms of the sale; in addition, he shall be liable to the United States for all losses incurred by the United States at a subsequent sale of the same property. The liability for losses shall be limited to the difference between the amount of the deposit which was forfeited and the amount accepted by the United States as the highest bid by the defaulting bidder at the defaulted sale plus the costs of the defaulted sale. This liability shall be reduced by the amount the United States realizes from the subsequent sale, if any.

"(7) RESALE OF PROPERTY.—When the terms of the sale are not complied with by the bidder, the United States marshal shall proceed to sell the property again on the same day, if there is sufficient time; but if not, he shall readvertise and sell the property.

"(8) TRANSFER OF TITLE AFTER SALE.—

"(A) When the sale has been made and its terms complied with, the United States marshal shall execute and deliver any and all documents necessary to transfer ownership to the purchaser, without warranty, all the rights, titles, interest, and claims that the judgment debtor had in the property sold to the purchaser.

"(B) If the purchaser dies before execution and delivery of the documents needed to transfer ownership, the United States marshal shall execute and deliver them to the estate of the purchaser, and it shall have the same effect as if accomplished during the lifetime of the purchaser.

"(9) PURCHASER CONSIDERED INNOCENT PURCHASER WITHOUT NOTICE.—The purchaser of property sold under execution is considered to be an innocent purchaser without notice if the purchaser would have been considered an innocent purchaser without notice had the sale been made voluntarily and in person by the defendant.

"(10) NO RIGHT OF REDEMPTION.—The judgment debtor shall not be entitled to redeem the property after the execution sale.

"(11) DISTRIBUTION OF SALE PROCEEDS.—

"(A) The United States marshal shall first deliver to the judgment debtor, or his agent or attorney, such amounts to which he is entitled from the sale of partially exempt property as set forth in subchapter E of this chapter.

"(B) The United States marshal shall retain from the proceeds of a sale of property an amount equal to the reasonable expenses incurred in making the levy and keeping and maintaining the property.

"(C) The United States marshal shall deliver the balance of the money collected on execution to the counsel for the United States at the earliest opportunity.

"(D) If more money is received from the sale of the property than is sufficient to satisfy the executions held by the United States marshal, he shall pay forthwith the surplus to the judgment debtor or his agent or attorney.

"(h) REPLEVY.—(1) Any personal property taken in execution may be returned to the defendant by the United States marshal upon the delivery by the defendant to him of a bond or upon satisfaction of the judgment and any costs incurred in connection with scheduling the sale prior to the execution sale, payable to the United States, with two or more good and sufficient sureties, to be approved by the United States marshal, conditioned upon the delivery of the property to the United States marshal at the time and place named in the bond, to be sold according to law, or for the payment to the United States marshal of a fair value thereof, which shall be stated in the bond.

"(2) Where property has been replevied, as provided above, the judgment debtor may sell or dispose of the property paying the United States marshal the stipulated value thereof.

"(3) In the case of the non-delivery of the property according to the terms of the delivery bond, and non-payment of the value thereof, the United States marshal shall forthwith endorse the bond 'Forfeited' and return it to the clerk of the court from which the execution issued; whereupon, if the judgment remains unsatisfied in whole or in part, the clerk shall issue execution against the principal judgment debtor and the sureties on the bond for the amount due, not exceeding the stipulated value of the property, upon which execution no delivery bond shall be taken, which instruction shall be endorsed by the clerk on the execution.

"(i) DEATH OF JUDGMENT DEBTOR.—The death of the judgment debtor after a writ of execution is issued stays the execution proceedings, but any lien acquired by levy of the writ must be recognized and enforced by the court having jurisdiction over the estate of the deceased. The execution lien may be enforced against the executor, administrator, or personal representative of the estate of the deceased; or if there be none, against the heirs or devisees of the property of the deceased receiving same, but only to the extent of the value of the property coming to them.

"(j) WHEN EXECUTION NOT SATISFIED.—When the property levied upon does not sell for enough to satisfy the execution, the United States marshal shall proceed on the same writ of execution as to other property of the judgment debtor.

"(k) RETURN ON EXECUTION.—(1) The United States marshal shall make a written return on each writ of execution to the court from which the writ was issued and deliver a copy to counsel for the United States who requested the writ. It shall be returnable 90 days from the date of issuance unless counsel for the United States has specified an earlier date. The return shall be filed by the clerk of the court from which the writ was issued.

"(2) The United States marshal shall state concisely what was done in pursuance of the requirements of the writ.

"(3) The return shall be made forthwith if satisfied by the collection of the money, or if ordered by counsel for the United States, which order shall be noted on the return.

"§ 3305. Installment payment order

"Where it is shown that the judgment debtor is receiving or will receive money from any source or is attempting to impede the United States by rendering services without adequate compensation, upon motion of the United States and notice to the judgment debtor, the court may, if appropriate, order that the judgment debtor make specified installment payments to the United States. Notice of the motion shall be served on the judgment debtor in the same manner as a summons or by registered or certified mail, return receipt requested. In fixing the amount of the payments, the court shall take into consideration the rea-

sonable requirements of the judgment debtor, any payments required to be made by the judgment debtor or deducted from the money he would otherwise receive in satisfaction of other judgments, the amount due on the judgment, and the amount being or to be received, or, if the judgment debtor is attempting to impede the United States by rendering services without adequate compensation, the reasonable value of the services rendered.

"Upon motion of the United States, and upon a showing that the debtor's financial circumstances have changed or that assets not previously disclosed by the debtor have been discovered, the court may increase the amount of payments or alter their frequency or require full payment.

"§ 3306. Garnishment

"(a) GENERAL.—A court may issue writs of garnishment, either prejudgment or postjudgment against the property of a debtor which is in the possession, custody or control of a third person in order to satisfy a judgment against the debtor; co-owned property shall be subject to garnishment to the same extent as it is under the law of the States in which it is located. The United States may request and a court shall issue simultaneous separate writs of garnishment to several garnishees. All writs of garnishment issued pursuant to these provisions shall be continuing and shall terminate only as provided herein.

"(b) WRIT.—

"(1) GENERAL REQUIREMENTS.—The United States shall include in its application for a writ of garnishment, the following:

"(A) any matters required by section 3104 when seeking prejudgment garnishment;

"(B) the debtor's name, social security number, if known, and the debtor's last known address;

"(C) the nature and amount of the debt alleged to be owed and that demand on the debtor for payment of the debt has been made, but the debtor has not paid the amount due. A money judgment must be alleged for postjudgment garnishment; and

"(D) that the garnishee is believed to be indebted to the debtor or have possession of property of the debtor.

"(2) PROPER GARNISHEE FOR PARTICULAR PROPERTY.—

"(A) Where property consists of a right to or share in the stock of an association or corporation, or interests or profits therein, for which a certificate of stock or other negotiable instrument is not outstanding, the corporation, or the president or treasurer of the association, shall be the garnishee.

"(B) Where property consists of a right to or interest in a decedent's estate or any other property or fund held or controlled by a personal representative or fiduciary, the personal representative or fiduciary shall be the garnishee.

"(C) Where property consists of an interest in a partnership, any partner other than the debtor, shall be the garnishee on behalf of the partnership.

"(D) Where property or a debt is evidenced by a negotiable instrument for the payment of money, a negotiable document of title or a certificate of stock of an association or corporation, the instrument, document or certificate shall be treated as property capable of delivery and the person holding it shall be the garnishee; except that in the case of a security which is transferable in the manner set forth in State law, the firm or corporation which carries on its books an account in the name of the debtor in which is reflected such security, shall be the garnishee; *Provided, however*, That if such security has been pledged, the pledgee shall be the garnishee.

"(c) ISSUANCE OF WRIT.—

"(1) CLERK'S REVIEW.—The clerk or the court shall review the application for postjudgment writs of garnishment and if it meets the requirements set forth herein, shall issue an appropriate writ. The clerk shall issue prejudgment writs of garnishment as authorized by the court.

"(2) FORM OF WRIT.—

"(A) GENERAL PROVISIONS.—The writ shall state—

"(i) The nature and amount of the debt. If interest is accruing, the rate of accrual thereafter shall be stated. If a judgment is involved, the amount of any costs included in the judgment should be stated.

"(ii) The name and address of the garnishee.

"(iii) The name and address of counsel for the United States.

"(iv) The last known mailing address of the debtor.

"(v) That the garnishee shall answer the writ within 10 days of service of the writ.

"(B) EARNINGS GARNISHMENT.—The United States may apply for garnishment of the nonexempt disposable earnings of a natural person. The writ for the garnishment of earnings shall direct the garnishee to withhold and retain the nonexempt earnings for which the garnishee is indebted to the debtor at the time of receipt of the writ and may thereafter become indebted to the debtor pending further order of the court.

"(C) GARNISHMENT OF OTHER PROPERTY.—As to all non-earnings property of a debtor who is a natural person and all property of other debtors in the possession, custody and control of the garnishee at the time the writ is received by the garnishee and anytime thereafter, the writ shall direct the garnishee to retain possession, custody and control of and not to transfer or return the property pending further order of the court.

"(D) SERVICE OF WRIT.—The United States may serve the garnishee with a copy of the writ by first class mail or by delivery by the United States marshal as provided by rule 4 of the Federal Rules of Civil Procedure. The United States shall, at the same time, serve the debtor with a copy of the writ by first class mail to the debtor's last known address; counsel for the United States shall certify to the court that this service was made. The writ of garnishment shall be accompanied by instruction explaining the requirement that the garnishee submit a written answer to the writ of garnishment and instructions to the debtor for objecting to the answer of the garnishee and for obtaining a hearing on the objections.

"(E) ANSWER OF THE GARNISHEE.—In its written answer to the writ of garnishment, the garnishee shall state under oath whether it is indebted to the debtor or has custody, control or possession of the debtor's property; a description of the indebtedness or property; whether the indebtedness or property is subject to any prior garnishments or levies and a description of any such claim; and whether the indebtedness or property is subject to any exemptions from garnishment. In addition, if the writ of garnishment is against the earnings of the debtor, the garnishee shall state whether the debtor was employed at the time the writ was received, and, if so, how much was owed at the time; and whether the garnishee anticipates owing earnings to the debtor in the future, and, if so, the amount and whether the pay period will be weekly or another specified period. In all cases, the garnishee shall file the original answer with the court issuing the writ and serve a copy on the debtor and counsel for the United States. Any garnishee, including a corporation, may file an answer without the representation of an attorney.

"(F) OBJECTIONS TO ANSWER.—Within 20 days after receipt of the answer, the debtor and the United States may file a written objection to the answer and request a hearing on the objection. The party objecting must state the grounds for the objection and bears the burden of proving them. A copy of the objection and request for hearing shall be served on the garnishee and the other party. The court shall set a hearing within 10 days after the date the request was received by the court, or as soon thereafter as is practicable, and give notice of the date to all parties.

"(G) GARNISHEE'S FAILURE TO ANSWER OR PAY.—If a garnishee fails to answer or pay within the time specified, the United States may petition the court for an order requiring the garnishee to appear before the court to answer the writ or pay by the appearance date. If the garnishee fails to appear or does appear and fails to show good cause why he failed to comply with the garnishment writ, the court shall enter judgment against the garnishee for the full amount of the past debt owed by the debtor. The court shall award reasonable attorney's fees to the United States and against the garnishee if the writ has not been answered within the time specified therein and a petition requiring the garnishee to appear was filed as provided in this section. Failure to answer or pay within the time specified in the writ may also be punished as a contempt of the court.

"(H) DISPOSITION ORDER.—After the garnishee files its answer and if no hearing is required, the court shall promptly enter an order directing the garnishee as to the disposition of the debtor's property. If a hearing is required, the order shall be entered within 5 days of the hearing, or as soon thereafter as is practicable.

"(I) PRIORITIES.—Court orders and garnishments for the support of a person shall have priority over a writ of garnishment issued pursuant to these provisions. As to any other garnishment or levy, a garnishment issued pursuant to these provisions shall have priority over those which are later in time and shall be satisfied in the order in which the writs are served upon the garnishee.

"(J) ACCOUNTING.—The debtor or garnishee may request an accounting on a garnishment within 10 days after the garnishment terminates. The United States shall give a written accounting to the debtor and garnishee of all earnings and property it receives under a writ of garnishment within 20 days after it receives the request of the debtor or garnishee. Within 10 days after the accounting is received, the debtor or garnishee may file a written objection to the accounting and a request for hearing. The party objecting must state grounds for the objection. The court shall set a hearing on the objection within 10 days after the court receives the request for a hearing, or as soon thereafter as is practicable.

"(K) DISCHARGE OF GARNISHEE'S OBLIGATION.—A garnishee shall be discharged as set forth in section 3311 of this subchapter.

"(L) TERMINATION OF GARNISHMENT.—A garnishment proceeding hereunder can be terminated by—

"(i) the court quashing the writ of garnishment;

"(ii) exhaustion of earnings or property in the possession, custody or control of the garnishee, unless the garnishee reinstates or reemploys the debtor within 90 days of dismissal or resignation; or

"(iii) satisfaction of the debtor's obligation to the United States.

"§ 3307. Modification or protective order; supervision of enforcement

"Within the provisions of this chapter, the court may at any time on its own initiative or the motion of any interested person, and upon such notice as it may require, make an order denying, limiting, conditioning, regulating, extending or modifying the use of any enforcement procedure.

"§ 3308. Power of court to punish for contempt

"A court shall have power to punish a civil or criminal contempt committed with respect to an enforcement procedure or order under this chapter.

"§ 3309. Arrest of judgment debtor

"Upon motion of the judgment creditor without notice, where it is shown by affidavit or otherwise that the judgment debtor is about to depart from the jurisdiction of the United States, or keeps himself concealed therein with intent to hinder, delay or defraud the judgment creditor, and that there is reason to believe that the judgment debtor has in his possession or custody nonexempt property in which he has an interest, the court may issue a warrant directed to the United States marshal to arrest the judgment debtor forthwith and bring him before the court. The United States marshal shall serve upon the judgment debtor a copy of the warrant and supporting documents at the time of arrest. When the judgment debtor is brought before the court, the court may order that he give a bond or undertaking in a sum to be fixed by the court, that he will appear before the court for examination and that he will obey the terms of a restraining notice contained in the order.

"§ 3310. Discharge

"A person who pursuant to an execution or order pays or delivers to the United States, a United States marshal or receiver, money or other personal property in which a judgment debtor has or will have an interest, or so pays a debt he owes the judgment debtor, is discharged from his obligation to the judgment debtor to the extent of the payment or delivery.

"SUBCHAPTER E—EXEMPT PROPERTY

"Sec.
"3401. Exempt property.
"3402. Limitation on exempt property.

"SUBCHAPTER E—EXEMPT PROPERTY

"§ 3401. Exempt property

"Except as provided under section 3402, the following property of natural persons shall be exempted from the enforcement procedures under the provisions of this chapter as to debts owed the United States—

"(a) the debtor's aggregate interest, not to exceed $7,500 in value in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor;

"(b) the debtor's interest, not to exceed $1,200 in value, in one motor vehicle;

"(c) the debtor's interest, not to exceed $200 in value in any particular item or $4,000 in aggregate value, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family or household use of the debtor or a dependent of the debtor;

"(d) the debtor's aggregate interest, not to exceed $500 in value, in jewelry held primarily for the personal, family or household use of the debtor or a dependent of the debtor;

"(e) the debtor's aggregate interest in any property, not to exceed in value $400 plus up to $3,750 of any unused amount of the exemption provided under subsection (a) of this subsection;

"(f) any unmatured life insurance contract owned by the debtor, other than a credit life insurance contract;

"(g) the debtor's aggregate interest, not to exceed in value $4,000 less any amount of property of the estate transferred in the manner specified in section 542(d) of title 11, in any accrued dividend or interest under, or loan value of, any unmatured life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent;

"(h) the debtor's aggregate interest, not to exceed $750 in value in any implements, professional books or tools of the trade of the debtor or the trade of a dependent of the debtor;

"(i) professionally prescribed health aids for the debtor or a dependent of the debtor;

"(j) the debtor's right to receive—

"(1) a social security benefit, unemployment compensation, or a local public assistance benefit;

"(2) a veterans' benefit;

"(3) a disability, illness including Medicaid, Medicare, or unemployment benefits, and AFDC benefits;

"(4) alimony, child and spousal support or separate maintenance paid or received, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

"(5) a payment under a stock bonus, pension, profit-sharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, unless—

"(A) such plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under such plan or contract arose;

"(B) such payment is on account of age or length of service; and

"(C) such plan or contract does not qualify under section 401(a), 403(a), 403(b), 408, or 409 of the Internal Revenue Code of 1986 (26 U.S.C. 401(a), 403(a), 403(b), 408, or 409).

"(k) the debtor's right to receive, or property that is traceable to—

"(1) an award under a crime victim's reparation law;

"(2) a payment on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

"(3) a payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date of such individual's death, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

"(4) a payment, not to exceed $7,500, on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent; or

"(5) a payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

"§ 3402. Limitations on exempt property

"(a) Property upon which a judgment debtor has voluntarily granted a lien, shall not be exempt to the extent of the balance due on the debt secured thereby.

"(b) If, within 90 days prior to judgment or thereafter, the debtor has transferred non-exempt property and as a result acquires, improves or increases in value exempt property, his interest shall not be exempt to the extent of the increased value.

"(c) The United States may require the judgment debtor to file a statement with regard to each claimed exemption; the original shall be filed with the court in which the enforcement proceeding is pending, and a copy served upon counsel for the United States. The statement shall be under oath and shall describe each item of property for which exemption is claimed, the value and the basis for such valuation, and the nature of the judgment debtor's ownership interest.

"(d) The United States, by application to the court where an enforcement proceeding is pending, may request a hearing on the applicability of any exemption claimed by the judgment debtor. The court shall determine whether the judgment debtor is entitled to the exemption claimed and the value of the property with respect to which the exemption is claimed; unless the court finds that it is reasonably evident that the exemption applies, the judgment debtor shall bear the burden of going forward with evidence and of persuasion.

"(e) Assertion of an exemption shall not prevent seizure and sale of the property to which such exemption applies. However, where an exemption has been validly and properly asserted, the sale proceeds for that item of property must be applied first to satisfy the dollar value of the exemption and then to the balance of the judgment. Any excess remaining after payment of judgment shall be paid to the judgment debtor.

"SUBCHAPTER F—FRAUDULENT TRANSFERS

"Sec.
"3501. Definitions.
"3502. Insolvency.
"3503. Value.
"3504. Transfer fraudulent as to the United States on present and future claims.
"3505. Transfer fraudulent as to the United States on a present claim.
"3506. When transfer is made or obligation is incurred.
"3507. Remedies of the United States.
"3508. Defenses, liability and protection of transferee.
"3509. Supplementary provision.

"SUBCHAPTER F—FRAUDULENT TRANSFERS

"§ 3501. Definitions

"As used in this subchapter—

"(a) 'Affiliate' means—

"(1) a person who directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding

voting securities of the debtor other than a person who holds the securities—

"(A) as a fiduciary or agent without sole discretionary power to vote the securities; or

"(B) solely to secure a debt, if the person has not exercised the power to vote;

"(2) a corporation 20 percent or more of whose voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor or a person who directly or indirectly owns, controls, or holds, with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than the person who holds securities—

"(A) as a fiduciary or agent without sole power to vote the securities;

"(B) solely to secure a debt, if the person has not in fact exercised the power to vote;

"(C) a person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor; or

"(D) a person who operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets.

"(b) 'Asset' means property of a debtor, but does not include—

"(1) property to the extent it is encumbered by a valid lien; or

"(2) property to the extent it is exempt under subchapter E of this chapter.

"(c) 'Insider' includes—

"(1) if the debtor is an individual—

"(A) a relative of the debtor or of a general partner of the debtor;

"(B) a partnership in which the debtor is a general partner;

"(C) a general partner in a partnership described in subsection (c)(1)(B); or

"(D) a corporation of which the debtor is a director, officer, or person in control.

"(2) if the debtor is a corporation—

"(A) a director of the debtor;

"(B) an officer of the debtor;

"(C) a person in control of the debtor;

"(D) a partnership in which the debtor is a general partner;

"(E) a general partner in a partnership described in subsection (c)(2)(D); or

"(F) a relative of a general partner, director, officer, or person in control of the debtor.

"(3) if the debtor is a partnership—

"(A) a general partner in the debtor;

"(B) a relative of a general partner in, a general partner of, or a person in control of the debtor;

"(C) another partnership in which the debtor is a general partner;

"(D) a general partner in a partnership described in subsection (c)(3)(C); or

"(E) a person in control of the debtor.

"(4) an affiliate, or an insider of an affiliate as if the affiliate were the debtor; and

"(5) a managing agent of the debtor.

"(d) 'Lien' means a charge against or an interest in property to secure payment of a debt or performance of an obligation, and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceeding, a common law lien, or a statutory lien.

"(e) 'Relative' means an individual related by consanguinity within the third degree as determined by the common law, a spouse, or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree.

"(f) 'Transfer' means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, and creation of a lien or other encumbrance.

"(g) 'Valid lien' means a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings.

"§ 3502. Insolvency

"(a) A debtor is insolvent if the sum of the debtor's debts is greater than all of the debtor's assets at a fair valuation.

"(b) A debtor who is generally not paying his debts as they become due is presumed to be insolvent.

"(c) A partnership is insolvent under subsection (a) if the sum of the partnership's debts is greater than the aggregate, at a fair valuation, of all of the partnership's assets and the sum of the excess of the value of each general partner's non-partnership assets over the partner's non-partnership debts.

"(d) Assets under this section do not include property that has been transferred, concealed, or removed with intent to hinder, delay, or defraud creditors or that has been transferred in a manner making the transfer voidable under this subchapter.

"(e) Debts under this section do not include an obligation to the extent it is secured by a valid lien on property of the debtor not included as an asset.

"§ 3503. Value

"(a) Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied, but value does not include an unperformed promise made otherwise than in the ordinary course of the promisor's business to furnish support to the debtor or another person.

"(b) For the purposes of sections 3504(a)(2) and 3507, a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, non-collusive foreclosure sale or execution of a power of sale for the acquisition or disposition of the interest of the debtor upon default under a mortgage, deed of trust, or security agreement.

"(c) A transfer is made for present value if the exchange between the debtor and the transferee is intended by them to be contemporaneous and is in fact substantially contemporaneous.

"§ 3504. Transfer fraudulent as to the United States on present and future claims

"(a) A transfer made or obligation incurred by a debtor is fraudulent as to the United States, whether its claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation—

"(1) with actual intent to hinder, delay, or defraud the United States or any other creditor of the debtor; or

"(2) without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor—

"(A) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

"(B) intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due.

"(b) In determining actual intent under subsection (a)(1), consideration may be given, among other factors, to whether—

"(1) the transfer or obligation was to an insider;

"(2) the debtor retained possession or control of the property transferred after the transfer;

"(3) the transfer or obligation was disclosed or concealed;

"(4) before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;

"(5) the transfer was of substantially all of the debtor's assets;

"(6) the debtor absconded;

"(7) the debtor removed or concealed assets;

"(8) the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;

"(9) the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;

"(10) the transfer occurred shortly before or shortly after a substantial debt was incurred; and

"(11) the debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

"§ 3505. Transfer fraudulent as to the United States on a present claim

"(a) A transfer made or obligation incurred by a debtor is fraudulent as to the United States on its claims which arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at the time or the debtor became insolvent as a result of the transfer or obligation.

"(b) A transfer made by a debtor is fraudulent as to the United States on its claim which arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at the time, and the insider had reasonable cause to believe that the debtor was insolvent.

"§ 3506. When transfer is made or obligation is incurred

"For the purposes of this subchapter—

"(a) a transfer is made—

"(1) with respect to an asset that is real property, other than a fixture, but including the interest of a seller or purchaser under a contract for the sale of the asset, when the transfer is so far perfected that a good-faith purchaser of the asset from the debtor against whom applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee; and

"(2) with respect to an asset that is not real property or that is a fixture, when the transfer is so far perfected that the United States on a simple contract cannot acquire a judicial lien otherwise than under this subchapter that is superior to the interest of the transferee.

"(b) If applicable law permits the transfer to be perfected as approved in subsection (a) and the transfer is not so perfected before the commencement of an action for relief under this subchapter, the transfer is deemed made immediately before the commencement of the action.

"(c) If applicable law does not permit the transfer to be perfected as provided in subsection (a), the transfer is made when it be-

comes effective between the debtor and the transferee.

"(d) A transfer is not made until the debtor has acquired rights in the asset transferred.

"(e) An obligation is incurred—

"(1) if oral, when it becomes effective between the parties; or

"(2) if evidenced by a writing, when the writing was executed by the obligor is delivered to or for the benefit of the obligee.

"§ 3507. Remedies of the United States

"(a) In an action for relief against a transfer or obligation under this subchapter, the United States, subject to the limitations in section 3508, may obtain, subject to applicable principles of equity and in accordance with the Federal Rules of Civil Procedure—

"(1) avoidance of the transfer or obligation to the extent necessary to satisfy the claim of the United States;

"(2) an attachment or other remedy against the asset transferred or other property of the transferee in accordance with the procedure described by this chapter.

"(b) If the United States has obtained a judgment on a claim against the debtor, if the court so orders, it may levy execution on the asset transferred or its proceeds.

"§ 3508. Defenses, liability and protection of transferee

"(a) A transfer or obligation is not voidable under section 3504(a) against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.

"(b) Except as otherwise provided in this section, to the extent a transfer is voidable in an action by the United States under section 3507(a)(1), it may recover judgment for the value of the asset transferred, as adjusted under subsection (c), or the amount necessary to satisfy its claim, whichever is less. The judgment may be entered against—

"(1) the first transferee of the asset or the person for whose benefit the transfer was made; or

"(2) any subsequent transferee other than a good faith transferee who took for value or from any subsequent transferee.

"(c) If the judgment under subsection (b) is based upon the value of the asset transferred, the judgment must be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

"(d) Notwithstanding voidability of a transfer or an obligation under this subchapter, a good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to—

"(1) a lien on or a right to retain any interest in the asset transferred;

"(2) enforcement of any obligation incurred; or

"(3) a reduction in the amount of the liability on the judgment.

"(e) A transfer is not voidable under section 3504(a)(2) or section 3505 if the transfer results from—

"(1) termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or

"(2) enforcement of a security interest in compliance with article 9 of the Uniform Commercial Code or its equivalent in effect in the jurisdiction where the property is located.

"(f) A transfer is not voidable under section 3505(b)—

"(1) to the extent the insider gave new value to or for the benefit of the debtor after the transfer was made unless the new value was secured by a valid lien;

"(2) if made in the ordinary course of business or financial affairs of the debtor and the insider, or

"(3) if made pursuant to a good-faith effort to rehabilitate the debtor and the transfer secured present value given for that purpose, as well as an antecedent debt of the debtor.

"§ 3509. Supplementary provision

"Unless displaced by the provisions of this subchapter, the principles of law and equity, including the law merchant and the law relating to principal and agent, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause, supplement its provisions.

"SUBCHAPTER G—PARTITION

"SUBCHAPTER G—PARTITION

"§ 3601. Action by United States for partition

"(a) The United States, as co-owner or claimant of real or personal property, or an interest therein, may compel a partition of the property among the co-owners and tenants.

"(b) The district court shall have original jurisdiction of any civil action brought by the United States for the partition of property. The action for partition shall be filed in the judicial district in which the property, or a part thereof, is located. An action in a State court in which the United States is a defendant and in which the United States seeks partition may be removed to the district court.

"(c) The United States shall file a complaint stating—

"(1) the name and residence, if known, of each co-owner or claimant to such property;

"(2) the share of interest, if known, of each coowner or claimant in such property;

"(3) a description of the property sought to be partitioned; and

"(4) the estimated value of the property for which partition is sought.

"§ 3602. Service of process in partition action

"(a) Personal service of summonses and complaints and other process shall be made in accordance with rules 4 (c) and (d) of the Federal Rules of Civil Procedure upon a defendant who resides within the United States or its territories or insular possessions and whose residence is known.

"(b) Upon the filing of a certificate by counsel for the United States stating that it is believed that a defendant cannot be personally served, because after diligent inquiry within the State in which the complaint is filed his place of residence cannot be ascertained by the United States or, if ascertained, that it is beyond the territorial limits of personal service as provided in rules 4 (c) and (d) of the Federal Rules of Civil Procedure, service of Notice of Summons and Complaint shall be made on that defendant by publication in a newspaper published in the county where the property is located, or if there is no such newspaper, then in a newspaper having a general circulation in the State where the property is located, once a week for 3 successive weeks. Prior to the last publication, a copy of the notice shall also be mailed to a defendant who cannot be personally served as provided in this rule but whose place of residence is then known. Unknown owners may be served by publication in like manner by a notice addressed to 'Unknown Others.' Service by publication is complete upon the date of the last publication. Proof of publication and mailing shall be made by certificate of counsel for the United States, to which shall be attached a printed copy of the published notice with the name and dates of the newspaper marked thereon.

"§ 3603. Trial; commissioner; decree of partition

"(a) All questions of law or equity affecting the title of the property which may arise, and the determination of the share or interest of each of the co-owners or claimants shall be tried by the court without a jury.

"(b) The court shall determine whether the property, or any part thereof, is susceptible of partition. If the court determines that the whole, or any part of the property is susceptible of partition, then the court shall enter a decree directing the partition of the property which is held to be susceptible of partition, describing it and specifying the share or interest to which each party is entitled. The court shall then appoint three or more competent and disinterested persons as commissioners to make the partition in accordance with the court's decree, the majority of the commissioners may act.

"(c) The court may appoint a surveyor to assist the commissioners in making a partition of real estate. The commissioners may cause the real estate to be surveyed and partitioned into several tracts or parcels.

"(d) The court may appoint an appraiser or appraisers to value the property and file an appraisal report with the court and the commissioners, as the court directs.

"(e) The commissioners shall divide the property into as many shares as there are persons entitled thereto, as determined by the court, having due regard in the division of the property to the situation, quantity, and advantage of each share, so that the shares may be equal in value, as nearly as may be, in the proportion to the respective shares or interests of the parties entitled thereto.

"(f) The commissioners shall report in writing to the court; and the report shall be determined by a majority of the commissioners and the contents shall be governed by the provisions of rules 53(e) (1) and (2) of the Federal Rules of Civil Procedure. The report shall also contain the following—

"(1) The several tracts, units, or parcels into which the property was divided (describing each particularly);

"(2) the number of shares and the estimated value of each share;

"(3) the allotment of each share; and

"(4) field notes and maps as to each estate, as may be necessary.

"The findings and reports of the commissioners shall have the effect, and be dealt with by the court in accordance with the practice prescribed in rule 53(e)(2).

"(g) The decree of the court confirming the report of commissioners in a partition of property gives a recipient of an interest in the property a title equivalent to a conveyance of the interest by warranty deed as in the case of real property or by bill of sale as to personal property, from the other parties in the action.

"(h) All conditions, restrictive covenants, and encumbrances against the property that applied to the property prior to the partition shall remain against the property as partitioned unless those restrictions, covenants and encumbrances have been included and are subject to the partition action.

"§ 3604. Partition by sale

"Should the court determine that a fair and equitable division of the property, or any part thereof, cannot be made, the court shall order a sale of that part which is incapable of partition, which sale shall be for cash, or upon such other terms as the court may direct, and shall be made as provided by title 28, United States Code, chapter 127, or through a receiver, as the court so orders. The proceeds of such sale shall be paid into the court and partitioned among the persons and parties entitled thereto according to their respective interests.

"§ 3605. Costs

"Costs shall be taxed against each party to whom a share has been allotted in proportion to the value of such share.

"SUBCHAPTER H—FORECLOSURE OF SECURITY INTERESTS

"Sec.
"3701. United States foreclosures governed by Federal law.

"SUBCHAPTER H—FORECLOSURE OF SECURITY INTERESTS

"§ 3701. United States foreclosures governed by Federal law

"Unless the documents specifically adopt State law, any action by the United States to foreclose security interests in real property shall be governed by the Federal statutes and applicable regulations, provisions set forth in the transaction documents and by Federal common law where there is no governing statute, applicable regulation or provision, and not by the State law where the real property is located. This shall include, but not be limited to, questions regarding redemption rights and deficiency judgments.

"§ 3702. Deficiency rights on federally guaranteed or insured loans

"Unless the documents specifically adopt State law, the right of the United States to collect a deficiency following the foreclosure of a loan guaranteed or insured by the United States or any agency thereof shall be governed by Federal statutes, applicable regulations, and the provisions set forth in the transaction documents. The rights of the United States under this section shall apply notwithstanding the provisions of any State law and without regard to the method used by the loan holder to foreclose the loan.".

TITLE II—AMENDMENTS TO OTHER PROVISIONS OF LAW

SEC. 201. Section 505 of title 11, United States Code, is amended by adding at the end thereof the following subsection:

"(d) Payments of taxes under this title to a governmental unit may be applied by the governmental unit in a manner that preserves alternative sources of collection, if any.".

SEC. 202. Section 523(a) of title 11, United States Code, is amended as follows:

(a) by deleting the word "or" at the end of section 523(a)(9); and

(b) by deleting "." at the end of section 523(a)(10) and adding "; and" in lieu thereof; and

(c) by adding the following subsections at the end of section 523(a):

"(11) to the extent that such debt arises from a violation by the debtor of a civil or criminal statute, or a regulation rule, or order issued pursuant thereto, enforceable by an action by a governmental unit to recover restitution, damages, civil penalties, attorney fees, costs, or any other relief, or to the extent that such debt arises from an agreed judgment or other agreement by the debtor to pay money or transfer property in settlement of such an action by a governmental unit of the United States Government; or

"(12) to the extent such debt arises from a criminal appearance bond.".

SEC. 203. Section 523(a) of title 11, United States Code, is amended to read as follows:

(a) subsection (8) is amended to read as follows:

"(8) for an educational benefit overpayment or loan made, insured or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution, or for an obligation to repay funds received as an educational benefit, scholarship or stipend, unless—".

(b) subsection (8)(A) is amended to read as follows:

"(A) such loan, benefit, scholarship or stipend overpayment or loan first became due 7 years (exclusive of any applicable suspension of the repayment period) before the date of the filing of the petition; or".

SEC. 204. (a) Section 1129(a)(9)(C) of title 11, United States Code, is amended to read as follows:

"(C) with respect to a claim of a kind specified in section 507(a)(7) of this title, the holder of such claim will receive on account of such claim deferred cash payments, over a period not exceeding 6 years after the date of assessment of such claim or 6 years after confirmation for such claims that have not been assessed, of a value as of the effective date of the plan, equal to the allowed amount of such claim.".

(b) Section 1129 of title 11, United States Code, is amended by adding at the end thereof the following:

"(e) For purposes of determining the value of deferred cash payments under a plan with respect to a secured or unsecured tax claim, the appropriate interest rate shall be the statutory rate applicable to unpaid taxes owing to the governmental unit holding the claim.".

SEC. 205. Section 3142(c)(1)(B)(xi) of title 18, United States Code, is amended to read as follows:

"(xi) execute an agreement to forfeit upon failing to appear as required, property of a sufficient unencumbered value, including money, as is reasonably necessary to assure the appearance of the person as required, and shall provide the court with proof of ownership and the value of the property along with information regarding existing encumbrances as the judicial office may require.".

SEC. 206. Section 3142(c)(1)(B)(xii) of title 18, United States Code, is amended to read as follows:

"(xii) execute a bail bond with solvent sureties; who will execute an agreement to forfeit in such amount as is reasonably necessary to assure appearance of the person as required and shall provide the court with information regarding the value of the assets and liabilities of the surety if other than an approved surety and the nature and extent of encumbrances against the surety's property; such surety shall have a net worth which shall have sufficient unencumbered value to pay the amount of the bail bond.".

SEC. 207. Section 3142(g)(4) of title 18, United States Code, is amended by—

(a) striking out "(c)(2)(k)" and inserting in lieu thererof "(c)(1)(B)(xi)"; and

(b) striking out "(c)(2)(L)" and inserting in lieu thereof "(c)(1)(B)(xii)".

SEC. 208. (a) Section 3552(d) of title 18, United States Code, is amended by adding at the end thereof the following:

"The court shall provide a copy of the presentence report to the attorney for the Government to use in collecting an assessment, criminal fine, forfeiture or restitution imposed.".

(b) The amendment made by subsection (a) shall take effect as if enacted on the date of the taking effect of section 3552(d) of title 18, United States Code.

SEC. 209. Section 3565(a) of title 18, United States Code, is amended—

(1) in paragraph (1), by striking out "by execution against the property of the defendant"; and

(2) in paragraph (1) by striking out "civil cases." and inserting in lieu thereof "accordance with chapter 176 of title 28. The United States may elect at its discretion to use any remedy available under this chapter or chapter 176 of title 28 or any combination of such remedies in the same case."; and

(3) in paragraph (4), by deleting the word "Salaries" and inserting in lieu thereof the following:

"Notwithstanding any contrary provision in chapter 176 of title 28, United States Code, salaries."; and

(4) in paragraph (5), the second sentence should be deleted.

SEC. 210. Section 3579(f)(4) of title 18, United States Code, is amended by—

(a) striking out the "." at the end thereof; and

(b) adding at the end thereof the following: "only if they are in fear of contact with the defendant.".

SEC. 211. (a) Section 3613 of title 18, United States Code, is amended—

(1) in subsection (d), as added by section 212(a) of the Comprehensive Crime Control Act of 1984, by striking out the second sentence; and

(2) in subsection (e), as added by section 212(a) of the Comprehensive Crime Control Act of 1984 by—

(A) striking out "by execution against the property of the person fined";

(B) striking out "civil cases," and inserting in lieu thereof "accordance with chapter 176 of title 28,"; and

(C) adding at the end thereof "The United States may elect at its discretion to use any remedy available under this chapter or chapter 176 of title 28 or any combination of such remedies in the same case.".

(b) The amendments made by this section shall take effect as if enacted on the date of the taking effect of such section 3613.

SEC. 212. Section 3663(f)(4) of title 18, United States Code, is amended by inserting before the period at the end thereof the following: "only if they are in fear of contact with the defendant.".

SEC. 213. Section 524 of title 28, United States Code, is amended by adding at the end thereof the following:

"(d)(1) There shall be established in the United States Treasury a special fund to be known as the Department of Justice Debt Collection Fund (hereinafter in this subsection referred to as 'fund') which shall be available to the Attorney General without fiscal year limitation in such amounts as may be specified in appropriation Acts for the purposes set forth herein.

"(2) There shall be deposited in the fund 5 percent of all net amounts realized from the debts collected by the divisions of the Department of Justice and all United States attorney's offices. Deposits to the fund shall

begin the day after the date of enactment, from all amounts collected on and after that date.

"(3) The fund may be used for the following purposes of the Department of Justice:

"(A) the training of personnel of the Department of Justice in debt collection;

"(B) services pertinent to debt collection, such as title searches, debtor skiptracing, asset searches, credit reports and other investigations related to locating debtors and their property; and

"(C) expenses of costs of sales of property not covered by the sale proceeds, such as auctioneers' fees and expenses, maintenance and protection of property and businesses, advertising and title search and surveying costs;

"(4) Amounts in the fund which are not currently needed for the purpose of this section shall be kept on deposit or invested in obligations of, or guaranteed by the United States.

"(5) For fiscal years 1990, 1991, 1992, and 1993 there are authorized to be appropriated such sums as may be necessary for the purposes described in subsection (3). At the end of each fiscal year, any amount in the fund in excess of the amount appropriated, shall be deposited in the general fund of the Treasury of the United States, except that an amount not to exceed $5,000,000 may be carried forward and be available in the next fiscal year.

"(6) For the purposes of these subsections, amounts from debt collection efforts of the Department of Justice shall include amounts realized from actions brought by or judgments enforced by Department of Justice personnel, including those in all United States attorneys' offices, whether civil or criminal, and whether involving tax or non-tax debts owed to the United States, except as deposit of such amounts into other special funds is required by law.".

SEC. 214. Section 550 of title 28, United States Code, is amended by striking out "assistants and messengers" and inserting in lieu thereof "assistants, messengers, and private process servers.".

SEC. 215. Section 1961(c)(1) of title 28, United States Code, is amended to read as follows:

"(c)(1) The provisions of this section do not apply to judgments entered in favor of the United States.".

SEC. 216. Section 1962 of title 28, United States Code, is amended by adding the following after the first sentence thereof: "The provisions of this section do not apply to judgments entered in favor of the United States.".

SEC. 217. Section 1963 of title 28, United States Code, is amended by adding the following after the first sentence thereof: "Such a judgment entered in favor of the United States may be registered as specified any time after judgment is entered.".

SEC. 218. (a) Chapter 129 of title 28, United States Code, is amended by adding at the end thereof the following section:

"§ 2044. Payment of fine with bond money

"Upon motion of the United States attorney, the court shall order any money belonging to and deposited by the defendant with the court for the purposes of a criminal appearance bail bond (trial or appeal) to be held and paid over to the United States attorney to be applied to the payment of any assessment, fine, restitution or penalty imposed upon the defendants. The court shall not release any money deposited for bond purposes after a plea or a verdict of the defendant's guilt has been entered and before sentencing, except upon a showing that an assessment, fine, restitution or penalty cannot be imposed for the offense the defendant committed or that the defendant would suffer an undue hardship. This does not apply to any third party sureties.".

(b) The table of sections for chapter 129 of title 28, United States Code, is amended by adding at the end thereof the following new item:

"2044. Payment of fine with bond money.".

SEC. 219. Section 2410(c) of title 28, United States Code, is amended by adding at the end thereof the following: "In any case where the United States is a bidder at the judicial sale, it may credit the amount determined to be due it against the amount it bids at such sales.".

SEC. 220. Section 2413 of title 28, United States Code, and the item relating to section 2413 in the table of sections for chapter 161, are repealed.

Mr. LAUTENBERG. Mr. President, I rise in strong support of the Federal Debt Collection Procedures Act, of which I am an original cosponsor.

Mr. President, this is badly needed legislation. At a time when the Federal budget deficit threatens our economy and our ability to deal with significant unmet needs, it is simply intolerable that the Government is not collecting billions in outstanding debts.

This legislation addresses two major problems in the Federal Government's system of debt collection. First, the Federal Government must follow State enforcement procedures, which vary across the country and which often impede collection efforts. Second, the Department of Justice lacks adequate incentives to make debt collection a priority.

The bill addresses these problems by, first, establishing a uniform, national system of debt collection procedures. This will enhance the Federal Government's ability to collect debts in many States. It also will eliminate some of the inequities in the current system, under which similarly situated debters are treated differently in different States.

In addition, the bill would create incentives for the Department of Justice to pursue debt collection cases vigorously. Money collected by the Department and U.S. attorneys would be deposited into a debt collection fund, which could be used for future debt collection expenses. This should make it easier and more attractive for the Department to devote significant resources to debt collection efforts.

Mr. President, this bill was developed by U.S. attorneys who understand the problems created under the current system. They deserve credit for their work on the legislation.

I urge my colleagues to support the bill.

Mr. THURMOND. Mr. President, on January 25, 1989, I along with Senator BIDEN and Senator GRASSLEY, introduced S. 84, the Federal Debt Collection Procedures Act of 1989. Since then Senators LAUTENBERG, D'AMATO, COCHRAN, HELMS, WILSON, MCCAIN, PRESSLER, BRADLEY, LIEBERMAN, HATCH, and MIKULSKI have been added as cosponsors.

This legislation will enhance the remedies available to the United States for collection of debt owed to the Federal Government. Incredibly, it has been estimated by the General Accounting Office that the Federal Government has approximately $32 billion of outstanding, nontax, delinquent debt which is collectible.

Currently, the debts owed to the United States must be collected under the laws of the particular State where the debter resides. Those laws vary greatly from State to State, making enforcement of debt collection extremely difficult and cumbersome.

For example, in some States a debtor can exempt vast amounts of property from execution, whereas a similarly situated debtor in another State is granted no such exemption at all. It is unfair that Federal debtors who reside in States with strong collection laws are made to pay their debts while others use weak collection laws in debtors haven States to escape repayment of their debt.

In summary, S. 84 will correct the inequities that exist under the current system. This bill creates a firm, but fair, comprehensive statutory scheme for the collection of Federal debt. This legislation maintains State law, leaving State remedies unaffected in cases where the Federal government is not a party. This legislation will be used by Federal litigators in Federal courts to collect debts owed to the Federal Government.

Regarding the history of this act, a nearly identical bill was introduced in the 100th Congress. The Senate Judiciary Committee unanimously agreed to report the bill out of committee on October 5, 1988. On October 14, 1988, the U.S. Senate unanimously passed the Federal Debt Collection Procedures Act of 1988.

Finally, the Federal Debt Collection Procedures Act of 1989 represents a collaborative effort of the 93 U.S. attorneys across the country who perform the vast majority of debt collection litigation on behalf of the Federal Government. Such legislation reflects their broad legal expertise and practical experience. We must not ignore their collective wisdom.

Since introduction in the 101st congress, some technical and conforming changes have been made which improve the bill. The result was an amendment in the nature of a substitute which the Subcommittee on Courts and Administrative Practice reported on July 12, 1989. On October 5, 1989, the Senate approved the Federal Debt Collection Procedures Act as an amendment to S. 1711, a bill to implement the President's national drug

control strategy. Additionally, by unanimous consent on October 26, 1989, S. 84 was reported out of the Judiciary Committee.

This legislation is most important and I urge each Member of the Senate to support its passage.

Mr. BIDEN. Mr. President, today, I am pleased that the Senate is passing the Debt Collection Procedures Act of 1989, which I introduced with Senator THURMOND. This legislation was drafted by a committee of U.S. attorneys and is intended to facilitate the collection of all debts owed to the United States.

This bill is identical to the provision passed by the Senate as title V of S. 1711, the National Drug Control Strategy Act. It is also virtually the same as the bill passed in the 100th Congress that was not acted upon by the House. I am hopeful that the House of Representatives will act quickly on it this year.

The Justice Department is responsible for collecting debts owed to the United States by filing civil suits in Federal court. These debts include criminal fines and tax assessments, but mostly involve strictly civil matters, such as student loans and overpayments to veterans. In fiscal 1988, there were $32 billion in delinquent nontax debts, including 84,340 cases valued at $7.6 billion that had been referred to Justice for collection.

The Government Accounting Office has reported that the Justice Department has done a generally poor job of collecting these debts. The reasons: Justice must follow State enforcement procedures, which vary from State to State and may be inadequate to permit collection by the Government; and U.S. attorneys and the litigating sections of the Department have no incentive to make debt collection a high priority.

The bill addresses both problems. First, it would create a uniform, nationwide system of Federal debt collection procedures. Under the act, the Government would be able to collect civil, criminal, and tax judgments through such means as attachments, garnishments, judgment liens and sales, confessed judgments, and restraining orders in all judicial districts.

Second, the bill would create an incentive to give debt collection a higher priority by creating a debt collection fund. Five percent of the moneys collected by Justice and the U.S. attorneys would be placed in the fund for later collection-related expenses. This would make it possible for the Department to devote attention to debt collection without diverting resources from other functions.

I would also like to point out that this legislation would be cost-effective. The Department of Justice expects that the costs of implementing this proposal will be more than offset by the increased collections of money owed to the United States. In this time of tight budgets, we must take advantage of every opportunity to further reduce the deficit. Moreover, some of the collected money would be earmarked under existing law for certain priority items. For example, collection of unpaid criminal fines would not only contribute to reduction of the deficit, but would put more money into the victims fund, which is financed, in part, from such collections.

This bill was drafted by U.S. attorneys who, as the officials responsible for litigating debt collection cases in the Federal courts, have experienced firsthand the difficulties the Government has in collecting debts. This is the first time the U.S. attorneys have pooled their efforts to draft such an ambitious legislative product, and I applaud their efforts.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute.

The committee amendment was agreed to.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

So the bill (S. 84) was passed.

CONSENT OF CONGRESS TO AMENDMENTS TO THE SOUTHEAST INTERSTATE LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT COMPACT

The Senate proceeded to consider the bill (S. 1563) granting the consent of the Congress to amendments to the southeast interstate low-level radioactive waste management compact.

Mr. THURMOND. Mr. President, S. 1563 will give congressional consent to amendments to the southeast low-level radioactive waste management compact. This legislation will confer approval upon certain amendments adopted by the compact and ratified through legislation by each of the compact's member States. The southeast compact has eight member States: South Carolina, Alabama, Florida, Georgia, Mississippi, North Carolina, Tennessee, and Virginia. South Carolina's Barnwell facility is the region's current host facility for the disposal of low-level radioactive waste and North Carolina has been designated the next host State for the compact, with waste acceptance scheduled to begin in 1992.

This important legislation would amend the compact in two significant ways: First, by providing that no facility shall be required to operate more than 20 years or to accept more than 32,000,000 cubic feet of waste during its operating life; and second, by providing that no member State shall be allowed to withdraw from the compact unless all other member States and Congress consent to the withdrawal.

Mr. Chairman, these amendments will clearly prove to be of substantial benefit to the compact's member States and to our entire Nation since it furthers the important goals established by Congress when it passed the Low-Level Radioactive Waste Policy Act.

For these reasons, I urge my colleagues to support this bill.

The bill (S. 1563) was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

S. 1563

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Southeast Interstate Low-Level Radioactive Waste Compact Amendments Consent Act of 1989".

SEC. 2 CONSENT OF CONGRESS TO AMENDMENTS TO COMPACT.

Congress consent to the amendments to the Southeast Interstate Low-Level Radioactive Waste Management Compact made by party States to such Compact. Such amendments are substantially as follows:

At the end of article 5 add the following new section:

"(E) No party State shall be required to operate a regional facility for longer than a 20-year period, or to dispose of more than 32,000,000 cubic feet of low-level radioactive waste, whichever first occurs.".

Section (G), (H), and (I) of article 7 are amended to read as follows:

"(G) Subject to the provisions of article 7, section (H), any party State may withdraw from the compact by enacting a law repealing the compact, provided that if a regional facility is located within such State, such regional facility shall remain available to the region for four years after the date the Commission receives verification in writing from the Governor of such party State of the rescission of the Compact. The Commission, upon receipt of the verification, shall as soon as practicable provide copies of such verification to the Governor, the Presidents of the Senates, and the Speakers of the Houses of Representatives of the party States as well as the chairman of the appropriate committees of the Congress.

"(H) The right of a party State to withdraw pursuant to section (G), shall terminate thirty days following the commencement of operation of the second host State disposal facility. Thereafter a party State may withdraw only with the unanimous approval of the Commission and with the consent of Congress. For purposes of this section, the low-level radioactive waste disposal facility located in Barnwell County, South Carolina shall be considered the first host State disposal facility.

"(I) This compact may be terminated only by the affirmative action of the Congress or by rescission of all laws enacting the compact in each party State.".

DISTRICT OF COLUMBIA REVENUE BOND ACT

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 313, H.R. 3287, the District of Columbia bonds bill.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 3287) to waive the period of congressional review for certain District of Columbia acts authorizing the issuance of District of Columbia revenue bonds.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

The PRESIDING OFFICER. The bill is before the Senate and open to amendment. If there be no amendment to be offered, the question is on the third reading and passage of the bill.

The bill (H.R. 3287) was ordered to a third reading, was read the third time, and passed.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. DOLE. I move to lay the motion on the table.

The motion to lay on the table was agreed to.

STAR PRINT OF REPORT NO. 101-176

Mr. Mitchell. Mr. President, I ask unanimous consent that report No. 101-176 to accompany S. 1430 be star printed to reflect the changes which I send to the desk.

The PRESIDING OFFICER. Without objection, it is so ordered.

MEASURE PLACED ON CALENDAR—S. 1838

Mr. MITCHELL. Mr. President, I ask unanimous consent that S. 1838 introduced earlier today by Senator FOWLER, regarding certain agricultural products, be placed on the calendar.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MITCHELL. Mr. President, before adjourning for the day, I would like to advise other Senators and all concerned of the continuing discussions that the distinguished Republican leader and I and others have had with respect to the budget process, the reconciliation bill, and other related matters.

Earlier today, Senator DOLE and I met and exchanged views in what I characterize as a good and productive meeting. Our respective staffs are now meeting, and the staffs of the Budget Committee on both sides, Appropriations Committee, Finance Committee, believe we are making good progress toward what we hope will be a resolution of these matters, that we may anticipate being able to reach agreement on and announce on Monday.

I would like now to ask the distinguished Republican leader if he has any comments in this regard.

Mr. DOLE. If the majority leader will yield, I think he stated it correctly, the Republicans met in my office, Senators PACKWOOD, HATFIELD, and DOMENICI, and other Representatives, along with the OMB Director, Richard Darman, and went over the proposal presented to me by the majority leader. There are matters that need to be addressed and need to be staffed out. We have asked staff to take a look, and they will be working not only among themselves, but with your staff, to see if there is an understanding on certain items.

I hope that we can come back on Monday and that information will be available. I am also hopeful that we can reach an agreement with reference to debt limit, appropriations bills, and other matters still pending, including child care, reconciliation and capital gains. I think it has been accurately stated. That is it. They are meeting as we speak, so hopefully we can work it out on Monday.

Mr. MITCHELL. Again, I thank the distinguished Republican leader, not only for his comments, but for his continuing cooperation and courtesy, as we attempt to resolve the differences on these issues in a good faith and fair way. I look forward to that on Monday.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. MITCHELL. Mr. President, I ask unanimous consent that the distinguished Republican leader be recognized for such time as he may wish to address the Senate, and upon the completion of his remarks, the Senator from Montana be recognized for as much time as he wishes to address the Senate, and that upon the conclusion of the remarks of the Senator from Montana, that the Senate then stand adjourned until 2:30 p.m. on Monday.

The PRESIDING OFFICER. Without objection, it is so ordered.

The distinguished Republican leader is recognized.

FLAG BURNING

Mr. DOLE. Mr. President, several days ago, a Cook County circuit court judge ruled that a Chicago ordinance banning flag desecration violated the first amendment. Not surprisingly, the Cook County judge reached this tortured conclusion by relying almost exclusively on the Supreme Court's blunder in the Johnson case.

The Chicago ordinance was enacted in response to the so-called flag exhibit at Chicago's Institute of Art. As we all know, this exhibit was one of the more extreme examples of flag desecration: the exhibit placed the flag on the floor in a way that literally "invited" patrons of the institute to trample on Old Glory.

Apparently, flag desecration is a bad habit that the exhibit's creator just cannot seem to shake: He was arrested on Monday for burning the flag right here on the Capitol steps.

Mr. President, I applaud the city of Chicago. Its ordinance was an entirely legitimate expression of the outrage of its good citizens. And the ordinance deserved to be upheld by the Cook County circuit judge.

Today, the Capitol steps flag-burning case was assigned to a Federal judge here in Washington. In the next 2 weeks, the flag burners will probably file a pretrial motion urging the dismissal of their charges. Once the district court rules on the motion, the Supreme Court should then have the opportunity to review the flag statute's alleged constitutionality.

As I have said before, it is the obligation of the statute's sponsors to ensure that the Supreme Court reviews the statute on an expedited basis. They owe this much to Congress. They owe it to the American people. And they owe it to the good citizens of Chicago.

Mr. President, I ask unanimous consent that an article from the New York Times be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the New York Times, Nov. 1, 1989]

JUDGE FINDS FLAG LAW UNCONSTITUTIONAL

(By William E. Schmidt)

CHICAGO, October 31.—A Cook County Circuit Court judge ruled today that a Chicago ordinance banning flag desecration violates the free speech provisions of the Constitution and cannot be used to prosecute artists whose works make use of the flag.

The judge, Kenneth L. Gillis, issued an injunction that blocks the city from using the ordinance to prosecute 10 local artists, who say they want to display 9 works that involve image or representations of the flag.

In an opinion that relied heavily on the Supreme Court's decision in the summer in a Texas case, which concluded that flag burning can be a form of political expression protected by the Constitution, Judge Gillis said that the Chicago ordinance was too broad and that it had a "deterrent effect on freedom of expression."

In his ruling, Judge Gillis wrote, "When the flag is displayed in a way to convey ideas, such display is protected by the First Amendment."

LIMIT ON ARTIST AND NEWSPAPERS

That way, he wrote, everyone is protected. "For every artist who paints our flag into a corner" by way of illustration, the judge said, "there are others who can paint it flying high." He said the ordinance could also have a chilling effect on the ability of artists to earn a living by prohibiting the exhibition of certain kinds of art work in a gallery or by barring it from being sold.

He referred to Supreme Court rulings protecting commercial speech and said this part of the ordinance could apply to a newspaper printing a representation of the flag on a page, as The Chicago Tribune does daily on Page 1, or a store selling clothing with a label depicting a flag.

The ordinance reads, "Any person who for exhibition or display places or causes to be placed any word, figure, mark, picture, design, drawing or any advertisement of any nature upon any flag shall be guilty of a misdemeanor." The statute also applies to anyone "who exposes or causes to be exposed to public view any such flag" that has been treated in this way, like a gallery owner or art dealer.

Judge Gillis said at least some of the nine works by the artists arguably violate the city ordinance because each of the works display or represent an image of the flag in a fashion that might be construed by the city, in the language of the ordinance, as defacing, misusing or trampling the flag.

STATE FLAG UNDER ORDINANCE

The Chicago ordinance applies to the flag of the United States, the state, the city or a foreign country. The ordinance was passed by the Chicago City Council March 16. Violation is a misdemeanor carrying fines and imprisonment of up to six months.

The various works which the artists want to display, most of them with a political content, consist of paintings, sculptures and collages. One, for example, represents the flag displayed on the feet of a mannequin whose upper torso is buried in the sand. Another shows in American flag transparent over a nude male.

Also among the works is the piece by Scott Tyler, the artist who provoked the current outcry over flag desecration when his piece was displayed among a group of student works at the School of the Institute of Arts here.

In Mr. Tyler's piece, an American flag is draped on the floor in a manner that invites patrons to walk on it.

Mr. Tyler was among four people who were arrested on the steps of the United States Capitol Monday for setting afire three American flags.

OFFICIALS STUDYING RULING

City officials said they were studying Judge Gillis' ruling, and had not yet decided whether they intended to appeal. Since Judge Gillis's ruling only affected the city, it is not clear whether the Cook County prosecutor might seek to enforce similar state statutes, passed last year, that also ban flag desecration.

A spokesman for Cecil Partee, the Cook County State's Attorney, said his office was also studying the ruling.

The legal challenge by the artists was the latest round in the debate here that touches not only on conflicting values and beliefs about the flag, but between iconoclasm and patriotism, and the rights of the artist versus the values of the community.

The City Council passed the flag desecration ordinance amid the public outcry that followed the display of Mr. Tyler's piece. That display provoked daily demonstrations outside the Chicago Institute of Arts by veterans groups and other organizations, caused the state legislature to cut off funds to the school, which is affiliated with the art museum, and inflamed political oratory in Washington.

Despite the ruling today, Harvey Grossman, legal director of the American Civil Liberties Union here, said the artists will not put their works on public display until they had received assurances from Mr. Partee that he would abide by Judge Gillis's ruling as well.

"What was struck down today is that the government can define what our symbols mean to us," said Mr. Grossman. "This sends a message to politicians that they may wrap themselves in the flag, but they may not ask us to do so."

The PRESIDING OFFICER. The Senator from Montana is recognized.

MONTANA'S CENTENNIAL: THE STATEHOOD DEBATE

Mr. BAUCUS. Mr. President, 200 years ago this year, the U.S. Congress met for the first time.

One hundred years ago this year, Congress had the wisdom to admit four States to the Union. One of those States was Montana.

This year Montanans are preparing for our centennial, which occurs November 8. It is a time to celebrate. It is also a time to reflect on the past; that is, how we got here, what were the conditions, why are we here today celebrating our centennial and preparing for the future.

Montana's past is rich and varied. Our Western heritage is the story of a long line of pioneers: Native americans, settlers, miners, and ranchers.

But an important part of our history was determined far from the plains and mountains of my home State: Montana's struggle for statehood was fought in large part right here in this building.

THE EARLY DAYS

It was a long struggle.

After the Louisiana Purchase, Montana was part of a series of ever-shrinking northwestern territories: First the Nebraska Territory, with the capital in Omaha; later Dakota Territory, with the capital in Yankton; finally Idaho Territory, with the capital in Lewiston.

Then, in 1863, gold was discovered in Alder Gulch. Montana's first economic boom began. And with it, wrote historian James McClellan Hamilton, came "[g]amblers, saloonkeepers, lewd women, and outlaws," who were in control "until banished or hanged by the vigilantes."

The Idaho territorial government was helpless, unable to impose law and order across the Bitterroot Mountains.

So a group of Virginia City leaders petitioned for separate territorial status. Congressman James Ashley, of Ohio, introduced legislation to do so. In May 1864, the Montana Organic Act became law. It established a territorial governor appointed by the President, a two-chamber legislature elected by the people, a series of Federal appointive offices, and a territorial Delegate to the Congress of the United States.

It did not take Montanans long to seek full citizenship. Within 2 years, acting Gov. Thomas Meagher called a Constitutional convention to seek statehood. His motivation, some say, was to create a Senate seat for himself. In any event, the convention deteriorated into bitter partisanship, and the delegates were not able to submit a constitution for public ratification.

THE SECOND CONVENTION

Over the next 15 years, the statehood movement gradually gathered momentum. Why? It was a problem all-too-familiar to those of us in the West. Montanans felt alienated. The Federal Government was all-powerful. But it seemed utterly unconcerned about Montanans and their problems.

What's more, Washington had unleashed scores of inept and corrupt bureaucrats. One Montana newspaper wrote that Federal offices had become "a sort of lying-in hospital for political tramps."

Montanans wanted control of their own destinies. The legislature called for another Constitutional Convention.

In January 1884, the delegates convened. They included many of Montana's most influential leaders: William Andrews Clark, Marcus Daly, Joseph Toole. Strong-willed men, from different political parties. But they worked together. And after 28 days of debate, they proposed a constitution which the people of Montana ratified overwhelmingly.

Montana's new territorial delegate, Joseph Toole, headed for Washington to make Montana's case. Toole was well-suited to the task. A contemporary biographer described him as "a plain man of the people." At the same time, he was a skilled statesman, a gifted orator, and firmly committed to Montana's future.

Early in the 49th Congress, Delegate Toole introduced legislation that would grant Montana statehood under the new constitution. The bill was referred to the House Committee on Territories.

GRIDLOCK

And there it sat, as Montana became a pawn in a political chessmatch.

Washington, DC, was gripped by political gridlock. Democrat Grover Cleveland had just been elected President, by a narrow margin. Democrats controlled the House. Republicans

controlled the Senate. Both parties were reluctant to upset the partisan balance by admitting States likely to elect Senators from the other party.

The Republicans proposed that Republican Dakota be divided and admitted as two States, creating four new Senate seats, and that Republican Washington be admitted. The Democrats were willing to consider this, but only so long as Democratic New Mexico and Montana also were admitted. The Republicans refused. The standoff persisted through the 49th Congress and the first and second sessions of the 50th.

THE COMPROMISE OF 1889

The election of 1888 changed the political landscape. Republican Senator Benjamin Harrison defeated President Cleveland. Republicans also captured the House and retained the Senate.

A lame duck session was scheduled for early 1889, and the Democrats, controlling the House for a short time longer, decided to strike the best deal that they could.

A Senate bill simply granting statehood to South Dakota had been languishing in the House for more than a year. On January 15, the Chairman of the House Committee on Territories, William Springer of Illinois, called the Senate bill up on the House floor. He then offered an amendment replacing the South Dakota bill with an omnibus statehood bill. It would permit the people of Dakota to decide whether to form one State or two. And it would establish a process for granting statehood to Montana, Washington, and New Mexico.

TOOLE'S ADDRESS

Shortly after the omnibus amendment was offered, Delegate Toole took the floor. He read a memorial, from the people of Montana, requesting statehood. Then he presented Montana's case for, as he said, "a place in the galaxy of States, a star on the flag."

"We are," he said "24 years old, out of debt, of sound integrity, and good citizens. * * * Like a child grown beyond the capacity of its garments * * * we are restive under the promise of more suitable habiliments."

Toole then described Montana's grievances. The Federal Government had maintained a court system that was "inherently wrong." It had reserved the right to invalidate the laws of the popularly elected legislature. It "had declared what we shall teach in our public schools." It had restricted exports. It had failed to properly administer public lands.

But Toole reserved his sharpest criticism for appointed Federal officials. "Tradition informs us that the wise men all came from the East," he said, "and so our Republican friends * * * determined that history should repeat itself, have proceeded to treat us in their own good time to a fine assortment of imported political dudes."

Toole then told his House colleagues why Montana was ready to govern itself. He began with some statistics. There were 176,000 people; there were 1.5 million cattle and 2.5 million sheep; there were 306 cities and towns receiving U.S. mail, 31 banks, and many profitable mines; there were streetcars in Butte and Helena and electric lights in the major cities; there were "hotels and churches of splendid proportions and magnificent designs, attesting to the liberality and progressive spirit of our people;" there were 33 newspapers, of which 11 were Republican, 6 were Democratic, 7 were independent, 1 was "Mugwump," and one was "on the fence."

As for the people of Montana, "they are faithful and prompt in the discharge of every public duty. * * * I know their stern integrity and rugged honesty, their capacity for local self-government, and their deep devotion to the principles of our institution."

In conclusion, Toole asked the House to approve the Springer omnibus amendment, granting statehood to Montana, South Dakota, Washington, and New Mexico. If it did so, he assured his colleagues, "the wisdom and patriotism of our course will be vindicated by the deliberate judgment of mankind." Toole sat down to what the House record notes was "[l]ong continued applause." It was, one report said, a speech of "remarkable force and eloquence."

THE HOUSE DEBATE

When the House convened the next morning, the debate intensified. The Republicans opposed the Springer omnibus amendment. They insisted, instead, that Dakota be divided into two states and New Mexico omitted.

Springer tried to force a vote. The Republicans raised procedural objections, and the Springer amendment was ruled out of order. The original Senate bill, granting statehood only to South Dakota, became the pending business.

The Democrats fought back. They began offering perfecting amendments—designed, in essence, to recreate the omnibus amendment one provision at a time.

On January 18, Delegate Toole offered a three-line amendment authorizing the President to issue a proclamation "declaring the State of Montana admitted as a State into the Union, from and after the date of such proclamation." It was adopted by voice vote. Similar amendments were adopted regarding Washington and New Mexico. Late that day, the House passed the bill by a vote of 145 to 98.

CONFERENCE

Time was running out; the lame-duck session was about to expire, and Montana's fate hung in the balance.

On January 19, the Senate referred the House-passed bill to the Committee on Territories. On February 1, the committee recommended that the Senate disagree with the House amendments and call for a conference.

The conference began the next day. The Republicans were in the drivers' seat. They insisted that New Mexico be omitted and that South Dakota be admitted under its previously ratified constitution, with the other States drafting new constitutions that would be reviewed by the President.

House Democrats eventually decided to put these questions to the full House, in the form of proposed instructions to the conferees. On February 14, the House instructed the conferees to delete New Mexico and establish a two-tier system: South Dakota would be admitted immediately, and Montana, North Dakota, and Washington would be admitted upon ratification of a new constitution and a Presidential proclamation. On February 20, the conference report was agreed to.

THE MONTANA CONVENTION

The enabling act required a new Montana convention to propose a new constitution.

Delegates were elected quickly and assembled in Helena on July 4, 1889. Thirty-nine were Democrats, 36 were Republicans; seven had attended the 1884 convention. Copper king William Andrews Clark was elected convention president.

As in 1884, the delegates worked cooperatively to resolve their disagreements. After 6 weeks' debate, the delegates then approved the constitution and submitted it to the people of Montana, who ratified it overwhelmingly on October 1.

STATEHOOD

Under the terms of the enabling act, the constitution was then sent to Washington for Presidential review. Republican Benjamin Harrison had taken office.

Once again, Mr. President, the Democrats had done all the work, but the Republicans took the credit.

On November 8, 1889, President Harrison issued a proclamation declaring that "the admission of Montana into the union is now complete."

Secretary of State James Blaine transmitted the news by telegraph. Newly elected Governor Toole received the message in Helena at 10:40 a.m. Celebrations rang out across the city and State. The long wait was over. The Helena Daily Herald put it this way:

This 8th day of November, A.D. 1889, will forever be a red-letter day in the history of Montana. It marks the beginning of our grand career as a sovereign State. * * * Today the people of Montana became endowed with the fullest measure of the rights of citizenship—the right and power to

choose our orwn rulers, make our own laws, subject only to the limitations of the constitution.

MONTANA'S STAR

One more step was needed to make Montana's status complete.

In 1889, the America flag contained only 38 stars. But on July 4, 1890, a new flag was unfurled. It contained 43 stars, reflecting the admission of Montana, North Dakota, South Dakota, Washington, and Idaho.

Joseph Toole's dream had been achieved: Montana had "a place in the galaxy of States; a star on the flag."

Mr. President, I yield the floor.

ORDERS FOR MONDAY

ADJOURNMENT UNTIL 2:30 P.M.; JOURNAL OF PROCEEDINGS DEEMED APPROVED TO DATE; CALLING OF CALENDAR WAIVED; NO MOTIONS OR RESOLUTIONS OVER UNDER THE RULE; MORNING HOUR DEEMED EXPIRED

Mr. MITCHELL. Mr. President, I ask unanimous consent that when the Senate adjourns today, it stand in adjournment until 2:30 p.m. on Monday, November 6, and that when the Senate reconvenes on Monday, the Journal of proceedings be deemed to have been approved to date, the call of the calendar be waived, and no motions or resolutions come over under the rule, and that the morning hour be deemed to have expired.

I further ask unanimous consent that there be a period for the transaction of morning business not to exceed 30 minutes with Senators permitted to speak therein for up to 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADJOURNMENT UNTIL 2:30 P.M., MONDAY, NOVEMBER 6, 1989

The PRESIDING OFFICER. Under the previous order, the Senate will now stand adjourned until 2:30 p.m., Monday, November 6, 1989.

Thereupon, the Senate, at 4:46 p.m., adjourned until Monday, November 6, 1989, at 2:30 p.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate November 3, 1989:

JAMES MADISON MEMORIAL FELLOWSHIP FOUNDATION

CARROLL A. CAMPBELL, JR., OF SOUTH CAROLINA, TO BE A MEMBER OF THE BOARD OF TRUSTEES OF THE JAMES MADISON MEMORIAL FELLOWSHIP FOUNDATION FOR A TERM OF 4 YEARS.

DEPARTMENT OF LABOR

MARY STERLING, OF MISSOURI, TO BE AN ASSISTANT SECRETARY OF LABOR.

NATIONAL MEDIATION BOARD

PATRICK J. CLEARY, OF VIRGINIA, TO BE A MEMBER OF THE NATIONAL MEDIATION BOARD FOR THE TERM EXPIRING JULY 1, 1991.

JOSHUA M. JAVITS, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE NATIONAL MEDIATION BOARD FOR THE TERM EXPIRING JULY 1, 1992.

DEPARTMENT OF EDUCATION

THOMAS E. ANFINSON, OF CALIFORNIA, TO BE DEPUTY UNDER SECRETARY FOR MANAGEMENT, DEPARTMENT OF EDUCATION.

BETSY BRAND, OF VIRGINIA, TO BE ASSISTANT SECRETARY FOR VOCATIONAL AND ADULT EDUCATION, DEPARTMENT OF EDUCATION.

DEPARTMENT OF STATE

CHAS. W. FREEMAN, JR., OF RHODE ISLAND, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE KINGDOM OF SAUDI ARABIA.

LUIGI R. EINAUDID, OF MARYLAND, TO BE THE PERMANENT REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE ORGANIZATION OF AMERICAN STATES, WITH THE RANK OF AMBASSADOR.

WILLIAM CLARK, JR., OF THE DISTRICT OF COLUMBIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO INDIA.

SMITH HEMPSTONE, JR., OF MARYLAND, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF KENYA.

KEITH LEVERET WAUCHOPE, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE GABONESE REPUBLIC AND TO SERVE CONCURRENTLY AND WITHOUT ADDITIONAL COMPENSATION AS AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE DEMOCRATIC REPUBLIC OF SAO TOME AND PRINCIPE.

FRANCIS TERRY MCNAMARA, OF CALIFORNIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF CAPE VERDE.

R. JAMES WOOLSEY, OF MARYLAND, FOR THE RANK OF AMBASSADOR DURING HIS TENURE OF SERVICE AS UNITED STATES REPRESENTATIVE TO THE NEGOTIATION ON CONVENTIONAL ARMED FORCES IN EUROPE (CFE).

THE FOLLOWING-NAMED CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF CAREER MINISTER, FOR THE PERSONAL RANK OF CAREER AMBASSADOR IN RECOGNITION OF ESPECIALLY DISTINGUISHED SERVICE OVER A SUSTAINED PERIOD:

TERENCE A. TODMAN, OF THE VIRGIN ISLANDS

U.S. INTERNATIONAL DEVELOPMENT CORPORATION AGENCY

REGINALD J. BROWN, OF VIRGINIA, TO BE AN ASSISTANT ADMINISTRATOR OF THE AGENCY FOR INTERNATIONAL DEVELOPMENT.

UNITED NATIONS

THE FOLLOWING-NAMED PERSON TO BE A REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE 44TH SESSION OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS:

SAM GEJDENSON, OF CONNECTICUT.

THE FOLLOWING-NAMED PERSON TO BE A REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE 44TH SESSION OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS:

CHRISTOPHER H. SMITH, OF NEW JERSEY

DEPARTMENT OF JUSTICE

DONALD BELTON AYER, OF VIRGINIA, TO BE DEPUTY ATTORNEY GENERAL.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

THE JUDICIARY

GEORGE W. LINDBERG, OF ILLINOIS, TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ILLINOIS VICE PRENTICE H. MARSHALL, RETIRED.

DEPARTMENT OF JUSTICE

K. MICHAEL MOORE, OF FLORIDA, TO BE DIRECTOR OF THE U.S. MARSHALS SERVICE.

FOREIGN SERVICE

FOREIGN SERVICE NOMINATIONS BEGINNING PETER G. FREDERICK, AND ENDING JAMES F. BERMINGHAM, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON OCTOBER 4, 1989.

FOREIGN SERVICE NOMINATIONS BEGINNING WALTER G. BOLLINGER, AND ENDING DENNIS C. ZVINAKIS, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON OCTOBER 11, 1989.

FOREIGN SERVICE NOMINATIONS BEGINNING ELINOR GREER CONSTABLE, AND ENDING H. THOMAS WIEGERT, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON OCTOBER 17, 1989.